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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

NO. 88-305

STATE OF SOUTH CAROLINA,

Petitioner,

v.

DEMETRIUS GATHERS,

Respondent.

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

WILLIAM ISAAC DIGGS
Chief Attorney

South Carolina Office
of Appellate Defense
Suite 301, 1122 Lady Street
Columbia, SC 29201

ATTORNEY FOR RESPONDENT.

EDITOR'S NOTE

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QUESTIONS PRESENTED

I. Whether the Court should deny the Petition because the South Carolina Supreme Court vacated Respondent's death sentence pursuant to an adequate and independent rule of state law?

II. Whether the Court should deny the Petition because the South Carolina Supreme Court correctly interpreted the Eighth Amendment in vacating Respondent's death sentence?

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OPINION BELOW

The opinion of the South Carolina Supreme Court is reported as State v. Gathers, ___ S.C. ___, 369 S.E.2d 140 (1988), and is reproduced in Appendix A to the Petition for Writ of Certiorari on Pages 32 through 48.

JURISDICTION

The Court lacks jurisdiction because the South Carolina Supreme Court relied upon state law principles regulating the content of closing arguments in vacating Respondent's death sentence.

CONSTITUTIONAL PROVISIONS INVOLVED

If any constitutional provisions are involved, they are, as Petitioner notes, the Eighth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

During the guilt-innocence phase of the trial, various religious artifacts and other items found scattered about the crime scene were introduced into evidence by the prosecution. [Tr. pp. 565-567; Tr. pp. 784-787]. The victim's mother identified these items as her son's and testified to his religious beliefs and history of mental problems. [Tr. pp. 561-563].

In his sentencing phase closing argument, the Solicitor used this evidence as a springboard for speculation about the victim's character and beliefs, with the argument drifting further and further away from evidentiary support, concluding with the advancement of the Solicitor's own ideas about the victim as an adequate justification for the death penalty:

[Y]ou will have the exhibits to think about what happened out there. You will have some exhibits in there that will tell you, tell you what your decision must be in this case, although it's not pleasant. We know from the proof that Reverend Minister Haynes was a religious person. He had his religious items out there. This defendant strewn them across the bike path, thinking nothing of that.

Among the man cards that Reverend Haynes had among his belongings was this card. It's in evidence. Think about it when you go back there. He had his religious items, his beads. He had a plastic angel. Of course, he is now with the angels now, but this defendant Demetrius Gathers could care little about the fact that he is a religious person. Cared little of the pain and agony he inflicted upon a person who is trying to enjoy one of our public parks.

But look at Reverend Minister Haynes' prayer. "Dear God, help me to be a sport in this little game of life. I don't ask for any easy place in this lineup. Play me anywhere you need me. I only ask for the stuff to give you one hundred percent of what I have got. If all the hard drives seem to come my way, I thank you for the compliment. Help me to remember that you won't ever let anything come my way that you and I together can't handle. And help me to take the bad break as part of the game. Help me to understand that the game is

full of knots and knocks and trouble, and mae me thankful for them. Help me to be brave so that the harder they come the better I like it. And, of God, help me to always play on the square. No matter what the other players do, help me to come clean. Help me to study the book so that I'll know the rules, to study and think a lot about the greatest player that ever lived and other players that are portrayed in the book. If they ever found out the best part of the game was helping other guys who are out of luck, help me to find it out, too. Help me to be regular, and also an inspiration with the other players. Finally, of God, if fate seems to uppercute me with both hards, and I am laid on the shelf in sickness or old age or something, help me to take that as part of the game, too. Help me not to whimper or squeal that the game was a frameup or that I had a raw deal. When in the falling dusk I get the final bell, I ask for no lying, complimentary tombstones. I'd only like to know that you feel that I have been a good guy, a good game guy, a saint in the game of life."

Reverend Minister Haynes, we know, was a very small person. He had his mental problems. Unable to keep a regular job. And he wasn't blessed with fame or fortune. And he took things as they came along. He was prepared to deal with tragedies that he came across in his life.

And there has been some talk about this being a tragedy. Well let's get one thing straight. This isn't a tragedy. Tragedy is a birth defect, something over which we have no control. This is an atrocity. This was a willful, premeditated act of this defendant, who in Charleston County, on our shores, in this country, took with the most eager pleasure the life of another in the most gruesome, hard to describe and hard to believe circumstances. The appropriate punishment in this case is death.

You will find some other exhibits in this case that tell you more about a just verdict. Again this is not easy. No one takes any pleasure from it, but the proof cries out from the grave in this case. Among the personal effects that this defendant could care little about when he went through it is something that we all treasure. Speaks a lot about Reverend Minister Haynes. Very simple yet very profound. Voting. A voter's registration card.

Reverend Haynes believed in this community. He took part. And he believed that in Charleston County, in the United States of America, that in this country you could go to a public part and sit on a public bench and not be attacked by

the likes of Demetrius Gathers. Weigh the aggravating circumstances in this case. Look at it very carefully. Calmly, rationally.

Reverend Haynes believed that he could come onto our public parks and sit and be protected, that the law protected him. That Demetrius Gathers would not reign supreme on that public bench. And he doesn't reign supreme. The law in this case protects Reverend Minister Haynes. The proper verdict, the only verdict in this case, is death. Thank you.

[Tr. pp. 1207-1211].

The victim and Respondent were complete strangers. [Tr. 579]. The South Carolina Supreme Court vacated the death sentence because the victim's character was "unnecessary to an understanding of the circumstances of the crime" and the closing argument "conveyed the suggestion [Respondent] deserved a death sentence because the victim was a religious man and a registered voter." 369 S.E.2d at 144.

ARGUMENT I

The Court should not grant the Petition because the South Carolina Supreme Court vacated Respondent's death sentence pursuant to an adequate and independent rule of state law.

The South Carolina Supreme Court has ruled as a matter of state law that the victim's character, where unrelated to the circumstances of the crime, is irrelevant and prejudicial to the jury's assessment of an appropriate sentence in a capital trial. State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132, cert. den., 471 U.S. 1120, 105 S.Ct. 2368, 86 L.Ed.2d 266 (1985). This prohibition applies to references to character contained in the arguments of counsel. State v. Reed, 293 S.C. 515, 362 S.E.2d 13 (1987); State v. Bell, 223 S.C. 291, 360 S.E.2d 706 (1987); State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976).

That the Court established this rule apart from Eighth Amendment considerations is apparent from its application in Reed and from the treatment of Gaskins and Booth v. Maryland, 482 U.S. ___, 107 S.Ct. 2529, 96 L.Ed.2d 440 (1987), in State v. Bell, supra. In Reed, the Court vacated a death sentence because the Solicitor had described the victim as a "beloved man in the community who was hardworking and had performed numerous acts of fairness and kindness;" citing Bell, the Court identified its condemnation of this argument as the specific application of "elementary" state-law principles: the final argument in the penalty phase of a capital trial must be "carefully tailored so as not to appeal to the personal bias of a juror, nor calculated to arouse his passion or prejudice," and it must be "confined to the record and its reasonable inferences and must focus on the characteristics of the defendant and the nature of the crime." 362 S.E.2d at 16.

In Bell, the defendant claimed that the Solicitor had impermissibly compared his "social worth" with that of his victim. 360 S.E.2d at 712. The Court proceeded to analyze the argument under two rules of clearly independent origin, the state-law rule addressed in Gaskins and a rule derived from the Court's interpretation of Booth. Although the argument was found to be permissible under both rules, the Court's method of analysis clearly assumes as given that its interpretation of the state-law rule is in no way dependent upon what it perceives as the Eighth Amendment concerns of Booth.

The same analysis informs the Court's decision in the present case. While the Court does indeed find a violation of Booth, subsequent discussion and the references to Gaskins and Bell disclose that the Solicitor's argument was additionally impermissible because of its inflammatory nature and its irrelevance to the issues, a regulation of argument founded upon state law. Perhaps the Court was also

troubled by the lack of adequate evidentiary support for some of the Solicitor's observations.

This Court has no authority to review state court determinations of purely state law, nor may it review federal issues that can have no effect on a state court's judgment. International Longshoremen's Assn., AFL/CIO v. Davis, 476 U.S. 380, 106 S.Ct. 1904, 90 L.Ed.2d 389 (1986). In the present case, the Solicitor's closing argument in the sentencing phase of the trial was held to have violated both state law and the Eighth Amendment. But since the state-law rule is not dependent upon Booth or the Eighth Amendment for its efficacy, the South Carolina Supreme Court's decision to vacate Respondent's death sentence rests upon an adequate and independent state-law ground.

ARGUMENT II

The Court should not grant the Petition because the South Carolina Supreme Court correctly interpreted the Eighth Amendment in vacating Respondent's death sentence.

Dissents in Booth v. Maryland, *supra*, and Mills v. Maryland, ___ U.S. ___, 108 S.Ct. 1860, 100 L.Ed.2d 384 (1988), have questioned the correctness of excluding under the Eighth Amendment evidence of the impact of the victim's death upon his family and upon society as a whole: "I fail to see why the State cannot, if it chooses, include as a sentencing consideration the particularized harm that an individual's murder causes to the rest of society and, in particular, to his family." Booth, 107 S.Ct. at 2540 (White, J., joined by Rehnquist, C. J., O'Connor, J., and Stalia, J., dissenting). However, the continued viability of Booth is not presented by the present case, because the prosecution did not seek to introduce impact evidence or argue it as justification for a sentence of death. On the other hand, this is also not a case where, as incorrectly

represented by Petitioner, "the victim's slight build, his open vulnerability by preaching to any person and his mental problems, his location in the park with his religious items, reflect the character of the defendant who made his choice to attack his victim knowing these matters during the attack." [Petition for Writ of Certiorari, page 22]. What the record reflects is that Respondent and his co-defendants selected a person they did not know randomly in the dark of the night. [Tr. pp. 579-581; Tr. pp. 889-893]. Contrary to the Petitioner's claims, the South Carolina Supreme Court did not interpret Booth to prohibit any reference to the victim's character during sentencing, holding only that it could not be argued as justification for a sentence of death where it did not relate to the defendant's character or circumstances of the crime. *Cf.*, State v. Bell, *supra*, and State v. Read, *supra*. The Court's problem with the argument was no doubt compounded by the fact that several of the Solicitor's claims were not supported by the evidence or its reasonable inferences.

Regardless of references to Booth in the opinion, the Court merely applied settled Eighth Amendment principles to the closing argument. The Eighth Amendment requires the jury in the sentencing phase of a capital trial make an "individualized determination" of whether the defendant in question should be executed, based on "the character of the individual and the circumstances of the crime." Zant v. Stevens, 462 U.S. 862, 103 S.Ct. 2733, 2743, 77 L.Ed.2d 235 (1983) (emphasis in original); *see*, also, Eddings v. Oklahoma, 455 U.S. 105, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982).

To be sure, evidence that the victim's character served as the basis for his selection by his killer could reflect the defendant's character and the circumstances of the crime. Standing alone, however, the victim's character sheds no light on either of these concerns.

That the South Carolina Supreme Court understands this distinction and has not (as Petitioner erroneously

claims) "fundamentally misconstrued" Booth is readily apparent from the present case and from a comparison of Reed and Bell. [Petition for Writ of Certiorari, page 17]. In Reed, the fact that the victim was a "beloved man in the community who was hardworking and had performed numerous acts of kindness," 362 S.E.2d at 16, was correctly perceived by the Court as irrelevant to the question of whether or not the defendant deserved death or life, as the victim's character revealed nothing about the defendant or the circumstances of the crime. In Bell, the Court permitted testimony about the victim's "moderately affluent lifestyle and her plans for the future," 360 S.E.2d at 712, finding that these facts were "critical for the jury's understanding of why [she] was in the various places she was on the day of her abduction." Id.

In the present case, like Reed, there was no evidence of a nexus established between the character of the victim and the defendant's character or the circumstances of the crime, that is, the former does not help to understand the latter. The Solicitor's argument was correctly found to be impermissible under the Eighth Amendment, not specifically the Court's interpretation of Booth. That Amendment compels this result with or without recourse to Booth.

CONCLUSION

Because the opinion of the South Carolina Supreme Court in this case rested upon an adequate and independent rule of state law and the Court correctly interpreted and applied the Eighth Amendment, the Petition should be denied.

Respectfully submitted,


WILLIAM ISAAC DIGGS
Deputy Appellate Defender

South Carolina Office
of Appellate Defense
Suite 301, 1122 Lady Street
Columbia, SC 29201

ATTORNEY FOR RESPONDENT.

September 19, 1988.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

NO. 88-305

STATE OF SOUTH CAROLINA,

PETITIONER,

v.

DEMETRIUS GATHERS,

RESPONDENT.

A P P E N D I X

PAGES A-1 THROUGH A-135

15 DOROTHY LOUISE HAYNES, being
16 first duly sworn, testified as follows:
17 DIRECT EXAMINATION
18 BY MR. CONDON:
19 Q. Hi, Mrs. Haynes. Where do you live, please, ma'am?
20 A. I live in Ardmore, 1514 Balsam Street, in
21 Charleston.
22 Q. How long have you lived there?
23 A. Eight years.
24 Q. Eight years. And you live there with your husband,
25 Jesse Haynes?

1 A. Yes.
 2 Q. How long have y'all been married?
 3 A. Forty years
 4 Q. How many children did you have?
 5 A. Seven.
 6 Q. And what number child was Ricky Haynes?
 7 A. Fourth.
 8 Q. He was your fourth child?
 9 A. (Nodding affirmatively)
 10 Q. And he went to high school at Middleton, I believe?
 11 A. Wallace and Middleton.
 12 Q. Middleton. And where did he live in September of
 13 last year?
 14 A. He lived in the north area on John Street.
 15 Q. How long had he lived there?
 16 A. Almost approximately three months.
 17 Q. Three months?
 18 A. Uh-huh.
 19 Q. And as I understand it he had some odd jobs in
 20 September?
 21 A. Yes.
 22 Q. Didn't have regular employment?
 23 A. No.
 24 Q. And he had some mental problems, didn't he?
 25 A. Yes.

1 Q. And he had been in and out of our mental hospital a
 2 few times?
 3 A. Three times.
 4 Q. Three times. When his troubles began -- when did
 5 his mental troubles begin?
 6 A. Approximately about two years.
 7 Q. About two years ago?
 8 A. Yes, uh huh.
 9 Q. But you never had any problems with him in terms of
 10 violence, did you?
 11 A. No.
 12 Q. And he -- directing your attention to September of
 13 last year, on that Saturday night.
 14 A. Yes.
 15 Q. You saw him that Saturday, didn't you?
 16 A. Yes.
 17 Q. What time did he come to your home?
 18 A. He came to my house about twenty minutes to nine.
 19 Q. Twenty minutes to nine?
 20 A. Uh huh.
 21 Q. And did he have anything with him when he came to
 22 visit you?
 23 A. Yes, he had a bag, and he set it down in the...
 24 Q. Now you called him Ricky, didn't you?
 25 A. Ricky, yes.

- 1 Q. And he was a religious person, wasn't he?
- 2 A. Yes, he was.
- 3 Q. Tell us about that.
- 4 A. He got saved about three years ago, before he got
- 5 really in this mental problem. And after that he got
- 6 sort of mentally disturbed -- I am sorry, before that --
- 7 and he came to the Lord, and he loved the Lord.
- 8 Q. Did he often carry his religious items ---
- 9 A. He carry his religious item, his Bible; and he talks
- 10 to people all the time about the Lord.
- 11 Q. He was sort of a preacher, wasn't he?
- 12 A. Yes, he was.
- 13 Q. And did he give himself a title?
- 14 A. Yes.
- 15 Q. Called himself Reverend Minister?
- 16 A. Right.
- 17 Q. But he had no formal religious training, did he?
- 18 A. No, not really.
- 19 Q. Did he have a church?
- 20 A. Yes, he was at my church and also at Bethel
- 21 Pentecostal Holiness.
- 22 Q. Was he married or unmarried?
- 23 A. Unmarried.
- 24 Q. Did you have any knowledge of him being a homosexual
- 25 in any way?

- 1 A. No, he was not.
- 2 Q. And on that night you said he got to your home about
- 3 twenty minutes to nine?
- 4 A. Yes.
- 5 Q. How close is your home to the bike pathway?
- 6 A. I will say about probably five hundred yards.
- 7 Q. Very close?
- 8 A. Yes.
- 9 Q. Five hundred yards?
- 10 A. Yes.
- 11 Q. And did he have occasion on that night to leave?
- 12 A. Yes.
- 13 Q. About what time did he leave?
- 14 A. He leave my house about -- it was about 10:15.
- 15 Q. At night?
- 16 A. Yes, uh huh.
- 17 Q. And did he say where he was going?
- 18 A. No. I tried to get him to stay, and he said he was
- 19 going. And ---
- 20 Q. Did you have the impression he was coming back or
- 21 going away?
- 22 A. Yes. He told me, said he was going but he wasn't
- 23 going home, so I thought well he would just go, like he
- 24 liked to wander around, and come back. That is what he
- 25 usually does.

1 Q. Did he take his belongings with him?
 2 A. Yes.
 3 Q. Did he have occasion to refer to money in any way?
 4 A. Well, yes, but he didn't have any that night.
 5 Q. Did you lend him some money?
 6 A. Yes, I give him five dollars.
 7 Q. Was that five single dollar bills or one ---
 8 A. No, it was one five dollars bill.
 9 Q. And, of course, he didn't come back that night?
 10 A. No, he didn't.
 11 Q. And what time were you notified?
 12 A. This was about three o'clock in the morning
 13 Q. Three o'clock? That would be Sunday morning?
 14 A. Yes.
 15 Q. I want to show you a few items here. Your Honor, I
 16 believe these would be basically without objection at
 17 this point.
 18 MR. KENT: That is true, Your Honor.
 19 BY MR. CONDON:
 20 Q. State's Exhibit Number 7?
 21 A. Yes.
 22 Q. Is that ---
 23 A. All both.
 24 Q. And State's Exhibit Number 10?
 25 A. Yes.

1 Q. These are Ricky's Bibles?
 2 A. Yes.
 3 MR. CONDON: Your Honor, I want to move these
 4 into evidence at this time.
 5 THE COURT: Admitted without objection,
 6 appropriately marked, State's exhibit.
 7 (Thereupon, the items previously marked as State's
 8 Exhibits 7 and 10 were received into evidence.)
 9 BY MR. CONDON:
 10 Q. And, Mrs. Haynes, State's Exhibit Number 8, do you
 11 recognize that?
 12 A. Yes. That is olive oil, what he used to anoint
 13 people and pray for them.
 14 Q. Used to anoint people and pray for them?
 15 A. Yes.
 16 Q. That is what Reverend Minister Haynes had?
 17 A. Yes.
 18 Q. He carried that with him?
 19 A. Yes.
 20 Q. And State's Exhibit Number 9, which appears to be a
 21 sheet? Do you recognize that, Mrs. Haynes?
 22 A. That is his.
 23 Q. That is Ricky's sheet?
 24 A. Yes.
 25 Q. And he carried this with him on that night?

1 A. Well I didn't know what he had in the bag, but I
 2 know that is his things.
 3 Q. I understand. So you didn't know what he had in the
 4 bag when he was leaving ---
 5 A. Right, I didn't know ---
 6 Q. --- but that was a sheet he would normally have?
 7 A. Yes. Yes.
 8 MR. CONDON: Your Honor, I would like to move
 9 both of these into evidence.
 10 THE COURT: Admitted without objection,
 11 appropriately marked, State's exhibit.
 12 (Thereupon, the items previously marked as State's
 13 Exhibits 8 and 9 were received into evidence.)
 14 BY MR. CONDON:
 15 Q. Now, Mrs. Haynes, do you know the defendant,
 16 Penetrus Gathers?
 17 A. No, I don't.
 18 Q. And your son was thirty-one years of age ---
 19 A. Yes.
 20 Q. --- when he was killed?
 21 A. Yes.

1 MR. CONDON: Steven Hardrick.
 2 THE COURT: Just a moment, Mr. Clerk. Are
 3 there any persons in this room who are scheduled to
 4 be called as witnesses in this case? If so, please
 5 stand. (No response) Any persons in this room who
 6 are scheduled to be called as a witness? If so,
 7 please stand. (No response) Thank you.
 8 MR. KENT: Thank you, Your Honor.
 9 THE COURT: Go ahead, Mr. Clerk.
 10 MR. CONDON: Your Honor, this next witness is
 11 Steven Hardrick.
 12 ESDAVAN DUVAL HARDRICK, being
 13 first duly sworn, testified as follows:
 14 DIRECT EXAMINATION
 15 BY MR. CONDON:
 16 Q. Esdavan, they call you Steven, don't they?
 17 A. Yes.
 18 Q. Your other nickname is Nice?
 19 A. Yes.
 20 Q. How old are you?
 21 A. Eighteen.
 22 Q. Eighteen. And before you were arrested what did you
 23 do?
 24 A. Well, I went to school.
 25 Q. Where did you go to school?

1 A. Saint Andrews High.
 2 Q. What grade were you in?
 3 A. Tenth.
 4 Q. Tenth grade. And in this case you were charged with
 5 murder and criminal sexual conduct first degree, weren't
 6 you?
 7 A. Yes, sir.
 8 Q. What is the deal?
 9 A. Well ---
 10 Q. - Speak up.
 11 A. I pled guilty to what I did, was misprision of
 12 felony, not reporting what I seen in time; and I pled
 13 guilty to my charges under the Youthful Offender Act,
 14 hoping that the Judge will sentence me to a Youthful
 15 Offender Act.
 16 Q. Hoping, right?
 17 A. Yes, sir.
 18 Q. It's up to the Judge to decide?
 19 A. Yes, sir.
 20 Q. Those other charges -- what charge was that, the
 21 other charges?
 22 A. Burglary, the second degree, and grand larceny.
 23 Q. Burglary second degree and grand larceny?
 24 A. Yes, sir.
 25 Q. What did you do?

1 A. Well we broke into the Ninjitsu Arts, West Ashley.
 2 Q. West Ashley?
 3 A. Uh huh. And when was that? Do you remember when
 4 you did that?
 5 A. It was back in June of '86.
 6 Q. You were out on bond when you committed this other
 7 crime?
 8 A. Yes, sir.
 9 Q. All right. And that is the deal?
 10 A. Yes, sir.
 11 Q. In exchange for that you are testifying?
 12 A. Yes, sir.
 13 Q. All right. Let's go through your relationships with
 14 people here. How about Dyonzoria Brown, also known as
 15 Dee Brown? How do you know him?
 16 A. I met him through some friends. I have known him
 17 for about a year and a half now.
 18 Q. A year and a half. All right. How about Landell
 19 Hayes?
 20 A. Well we went to school together, middle school and
 21 high school. Since the seventh grade.
 22 Q. He is a good friend of yours, isn't he?
 23 A. Yes, he is a pretty good friend.
 24 Q. And this defendant here, Demetrius Gathers, also
 25 known as MiMi Gathers, how do you know him?

1 A. I met him through some friends.
 2 Q. How long have you known him?
 3 A. For about a year and a half.
 4 Q. All right. On -- I want to have you testify about
 5 September 13th of last year. That was a Saturday. What
 6 time did you get up?
 7 A. About ten.
 8 Q. About ten?
 9 A. (Nodding affirmatively)
 10 Q. And where did you live?
 11 A. 28 Oak Forest Drive.
 12 Q. Where is that?
 13 A. West Ashley.
 14 Q. Who did you live with?
 15 A. My grandmother and my aunt.
 16 Q. Your grandmother and your aunt?
 17 A. (Nodding affirmatively)
 18 Q. What did you do that morning?
 19 A. I stayed around the house and looked at T.V.
 20 Q. What time did you leave your house?
 21 A. It was about three, probably.
 22 Q. Three in the afternoon?
 23 A. Yes.
 24 Q. What did you do then?
 25 A. Well I went to one of my friend's house named Ron.

1 And then we walked to the bike path where I met up with
 2 Demetrius. And then from there we walked down to
 3 Magnolia Road. That is where we met up with Zandell
 4 Hayes.
 5 Q. So it was you, Demetrius, Zandell and Ron?
 6 A. Ron had left and went home.
 7 Q. What time did he go home?
 8 A. Well I will say it was about five then.
 9 Q. What were y'all doing, just bumming around, or what?
 10 A. Yes.
 11 Q. Were you drinking?
 12 A. No.
 13 Q. And Ron went home about five?
 14 A. Yes.
 15 Q. Tell us about this bike path. Have you been on that
 16 bike path before?
 17 A. Yes, sir.
 18 Q. What is it like?
 19 A. Well it's just a long bike path running from Wappoo
 20 Road all the way down to Highway 61. You know, people
 21 just either walk up down there, walk up or jog or ride
 22 their bike.
 23 Q. How far away is that bike path from your home?
 24 A. Not very far. I live almost by Forest Park, and the
 25 bike path is right next to Forest Park.

1 Q. All right. Five or six o'clock what were you doing?
 2 A. By six o'clock, me and Demetrius and Zandell been
 3 together, and we walked over to the park, Forest Park.
 4 Q. Where is Forest Park?
 5 A. That is located on Playground Road right next to the
 6 bike path.
 7 Q. Right next to the bike path?
 8 A. Uh huh.
 9 Q. What did y'all do there?
 10 A. Well, we sat out on the park for a little while with
 11 this other guy, and then from there we walked back down
 12 to the bike path.
 13 Q. What time was that?
 14 A. I don't know. It was about 6:30 at this time, I
 15 guess.
 16 Q. What were you doing, walking?
 17 A. Yes.
 18 Q. Then what did you do?
 19 A. Well after we got to the bike path we met up with
 20 Dyonzoria.
 21 Q. Dyonzoria?
 22 A. Yeah.
 23 Q. Did you also call him Dee Brown or Dondrell Brown?
 24 A. Dee Brown.
 25 Q. And what time did you meet up with him?

1 A. It would have to be about 6:30 or 7:00 then.
 2 Q. Was it dark at this time?
 3 A. No, it wasn't dark.
 4 Q. What did y'all do?
 5 A. Well we walked around for quite some time.
 6 Q. Anybody have a radio?
 7 A. Yeah, I had a radio.
 8 Q. What kind of radio was it?
 9 A. It was kind of a small radio, not very large.
 10 Q. Small radio?
 11 A. (Nodding affirmatively)
 12 Q. Anybody have an umbrella?
 13 A. Yes. Dyonzoria was walking with his umbrella.
 14 Q. Dyonzoria was walking with his umbrella?
 15 A. (Nodding affirmatively)
 16 Q. Steven, I want to hand you what is marked State's
 17 Exhibit 6 for identification purposes at this point. Do
 18 you recognize this umbrella?
 19 A. Yes, sir.
 20 Q. What umbrella is this?
 21 A. This was the umbrella that Dyonzoria was walking
 22 with.
 23 Q. So Dyonzoria, this is his umbrella?
 24 A. Uh huh.
 25 MR. CONDON: Your Honor, I want to move this

1 into evidence at this time.
 2 THE COURT: Without objection?
 3 MR. KENT: No objection.
 4 THE COURT: Admitted, appropriately marked,
 5 State's Exhibit.
 6 (Thereupon, the umbrella previously marked as
 7 State's Exhibit 6 was received in evidence.)
 8 BY MR. CONDON:
 9 Q. Okay. Was this seven o'clock?
 10 A. About seven o'clock.
 11 Q. And where did y'all go?
 12 A. Well from there we walked around in Ardmore. We
 13 walked over to Sequoia Apartments.
 14 Q. Sequoia Apartments?
 15 A. Uh huh.
 16 Q. What did y'all do there?
 17 A. We talked to some guys there.
 18 Q. How long did that last?
 19 A. About five or ten minutes at the most.
 20 Q. And who was with you?
 21 A. It was me, Dyonzoria, Iandell Hayes and Demetrius.
 22 Q. Were you drinking at that time?
 23 A. Not at that time.
 24 Q. Any drugs being used?
 25 A. No, sir.

1 Q. What happened?
 2 A. From there we walked around. Then we went back over
 3 to the Majik Market out there by the 20th Century Fox.
 4 We was out there for about ten minutes.
 5 Q. You went to the Majik Market by 20th Century Fox?
 6 A. Yes.
 7 Q. What is the 20th Century Fox?
 8 A. That is a club.
 9 Q. Where is that located?
 10 A. On Highway 61.
 11 Q. And the Majik Market is next to it?
 12 A. Yes, sir.
 13 Q. How far away is that spot from the bike path?
 14 A. That is a good deal away from there. I can't say
 15 how far, though.
 16 Q. Went by foot?
 17 A. Yes.
 18 Q. What did you do there at the Majik Market and 20th
 19 Century Fox?
 20 A. Well we sat out there for a little while, you know.
 21 And then from there we went back to the bike path. When
 22 we left the bike path we went over to the Beer Barn,
 23 which is now called ---
 24 Q. Went where now? To the Beer Barn?
 25 A. Yes.

1 Q. Where is that located?
 2 A. That's located on Highway 17.
 3 Q. Highway 17? So you went from Highway 61 to Highway
 4 17, the four of you?
 5 A. Yes, sir.
 6 Q. How long did that take you to get there?
 7 A. About twenty minutes or thirty minutes.
 8 Q. You went to the Beer Barn?
 9 A. Yes.
 10 Q. Did you buy beer there?
 11 A. Yes, sir.
 12 Q. What kind of beer did y'all buy?
 13 A. Schaefers.
 14 Q. Schaefer Beer?
 15 A. Uh huh.
 16 Q. How much did you buy?
 17 A. A twelve-pack.
 18 Q. What happened after that?
 19 A. Well from there we went back down to the bike path,
 20 where we had set up with Mr. Haynes.
 21 Q. All right. What time, about, did you leave the Beer
 22 Barn?
 23 A. At this time it would have to been about eight or
 24 nine.
 25 Q. Eight or nine o'clock?

1 A. (Nodding affirmatively)
 2 Q. Were you drinking beer along the way?
 3 A. Yes.
 4 Q. Who bought the beer?
 5 A. We got someone to buy the beer for us, but Dyonzoria
 6 went with him.
 7 Q. Who paid for it?
 8 A. Me and Landell had some money. We kind of like
 9 pitched in together.
 10 Q. How many beers did you drink before you got back to
 11 the bike path?
 12 A. About one.
 13 Q. About one? Apiece?
 14 A. Uh huh.
 15 Q. And you say you got up with Ricky Haynes, is that
 16 your testimony?
 17 A. Yes.
 18 Q. Do you know Ricky Haynes?
 19 A. No, I do not.
 20 Q. You didn't know him?
 21 A. (Shaking head negatively).
 22 Q. And where was he when you first saw him?
 23 A. He was standing by the bench on the bike path.
 24 Q. Standing by the bench on the bike path?
 25 A. (Nodding affirmatively)

1 Q. What was he doing?

2 A. Apparently he was, I believe, changing clothing.

3 Q. You think he was changing clothing?

4 A. (Nodding affirmatively)

5 Q. What did he do after he changed his clothing?

6 A. He sat back on the bench and ---

7 MR. KENT: - Your Honor, I am going to object to

8 this leading. I don't believe there has been any

9 testimony about what this -- that this man completed

10 anything. This is a leading question.

11 MR. CONDON: Withdraw it.

12 BY MR. CONDON:

13 Q. What was the lighting like? Was it dark or light?

14 A. It was dark out there.

15 Q. Dark out there? And when you got near Ricky Haynes,

16 what was he doing?

17 A. It looked like he was changing clothing to me.

18 Q. You say it looked like he was changing clothing.

19 Can you explain that, please?

20 A. Well because it looked like he was pulling up his

21 pants at the time.

22 Q. Did he pull up his pants?

23 A. Yes.

24 Q. After he pulled up his pants what did Ricky Haynes

25 do?

1 A. He sat back on the bench.

2 Q. How big was he?

3 A. Not very big.

4 Q. Not very big?

5 A. Huh uh.

6 Q. When he sat back on the bench what did y'all do?

7 A. When we came up to him, all of us told him hi,

8 hello. Then we sat down next to him. And we started

9 drinking our beer. We had the radio on at the time. And

10 then Demetrius was talking to the guy, and he said that

11 he didn't want to talk to him at the time.

12 Q. Who said that?

13 A. Mr. Haynes.

14 Q. What was Demetrius saying to him?

15 A. I don't know. I did not overhear it.

16 Q. What happened?

17 A. Well after that I believe Demetrius struck the man

18 with his fist.

19 Q. You say you believe he did?

20 A. Well he did.

21 Q. What did you see?

22 A. I saw him hit the man with his fist.

23 Q. Where were you at this time?

24 A. I was sitting on the other end of the bench.

25 Q. How long was the bench?

1 A. Not very long. I guess a little longer than this
 2 right here. (Indicating)
 3 Q. About four feet?
 4 A. Yes.
 5 Q. Where was Zandell Hayes?
 6 A. He was standing more or less like on the side of the
 7 man.
 8 Q. Where was Dyonzoria Brown?
 9 A. He was sitting like next to me.
 10 Q. Right next to you?
 11 A. Yes.
 12 Q. So two of you are on the bench next to Ricky
 13 Haynes?
 14 A. (Nodding affirmatively)
 15 Q. Zandell was behind him?
 16 A. Yes.
 17 Q. And your testimony is Demetrius Gathers struck him
 18 in the face with a fist?
 19 A. Yes, sir.
 20 Q. Where did he hit him in his face?
 21 A. I guess about in his mouth.
 22 Q. Excuse me?
 23 A. In his mouth.
 24 Q. What happened?
 25 A. Well he fell back. When he fell back, he fell more

1 or less into Zandell Hayes. And at that time he went
 2 wild.
 3 Q. Who went wild?
 4 A. Mr. Haynes.
 5 Q. What happened?
 6 A. After that, Zandell Hayes had hit the man.
 7 Q. How did Zandell Hayes hit the man?
 8 A. Hit him with his fist.
 9 Q. Where?
 10 A. I believe in his face.
 11 Q. What happened next?
 12 A. Then he kind of like moved up the bike path, and him
 13 and Demetrius was fighting.
 14 Q. Who moved up the bike path?
 15 A. Mr. Haynes.
 16 Q. How did he move?
 17 A. They were more or less tussling up the bike path.
 18 Q. Who was tussling?
 19 A. Mr. Haynes and Demetrius.
 20 Q. How far away did they go up the bike path?
 21 A. Not very far up the bike path. Let me see. I can't
 22 recall how far it was.
 23 Q. Over ten yards?
 24 A. It could have been about ten yards, yes.
 25 Q. This would have been Demetrius Gathers and Ricky

1 Haynes tussling?
 2 A. Yes, sir.
 3 Q. Explain that. How were they tussling?
 4 A. Well they were fighting, and Mr. Haynes was backing
 5 up, and then they kind of like hooked up together, and
 6 they were like rolling on the ground.
 7 Q. What was Zandell Hayes doing?
 8 A. He was over there with me at the time.
 9 Q. What was Dyonzoria Brown doing?
 10 A. He was over there with me at the time.
 11 Q. What happened next?
 12 A. After he had pinned the guy, Mr. Haynes, on the
 13 ground, that is when Dyonzoria went over there. And I
 14 believe he hit the guy. He hit the guy a couple of
 15 times.
 16 Q. How did he hit him?
 17 A. He hit him with his foot and with his fist.
 18 Q. Where did he kick him?
 19 A. In his ribs.
 20 Q. Where did he hit him with his fist?
 21 A. Probably about the same place.
 22 Q. In his ribs?
 23 A. (Nodding affirmatively)
 24 Q. How many blows at that time?
 25 A. I don't know. I couldn't say.

1 Q. What happened next?
 2 A. Well then after that Dyonzoria had got a bottle, and
 3 he struck the guy in the head with the bottle, twice.
 4 Q. How far away were you at this time?
 5 A. I was still by the bench, about ---
 6 Q. You can estimate about ten yards?
 7 A. Ten yards.
 8 Q. What happened next?
 9 A. Then Demetrius had picked up a bottle, and he hit
 10 the guy with the bottle until it finally broke, which was
 11 about three times.
 12 Q. Same bottle or a different bottle?
 13 A. Same bottle.
 14 Q. Was Ricky Haynes saying anything?
 15 A. I believe he was saying, "Oh, Lord".
 16 Q. You say you believe he was saying "Oh, Lord". What
 17 was he saying?
 18 A. That is what it sounded like to me, "Oh, Lord".
 19 Q. How many times did he say that?
 20 A. About twice.
 21 Q. After the bottle was broken over his head what
 22 happened?
 23 A. Well I believe he was unconscious down there because
 24 he wasn't moving, and that is when I went over to him and
 25 kind of like nudged him with my foot to see if he was all

1 right. At this time me and Mr. Hayes told them let's go.
 2 So we walked back into the middle of the path going to
 3 Starcastle Apartments, and that is when Dyonzoria had
 4 joined up with us. As we were walking through there we
 5 could look back and see the bike path and see that
 6 Demetrius and the guy -- well Demetrius was still hitting
 7 the guy ---

8 THE COURT: They can't hear you.

9 THE WITNESS: We were seeing that Demetrius was
 10 still hitting the guy.

11 BY MR. CONDON:

12 Q. You say that Demetrius was still hitting the guy?

13 A. Yes.

14 Q. What about the Starcastle Apartments, where were
 15 they?

16 A. That is right -- like on the side of the bike path.
 17 There is some woods between the bike path and the
 18 Starcastle Apartments.

19 Q. You say that Iandell Hayes and Dyonzoria Brown were
 20 with you?

21 A. We were in the middle of the path.

22 Q. Going to Starcastle?

23 A. Yes, on our way to Starcastle.

24 Q. And your testimony is you looked back?

25 A. Uh huh.

1 Q. And you saw what?

2 A. He was still hitting the guy.

3 Q. Who was?

4 A. Demetrius.

5 Q. How was he hitting him?

6 A. He was hitting him with the umbrella at this time.

7 Q. Hitting him with the umbrella?

8 A. Uh huh.

9 Q. How did he get that umbrella?

10 A. Well when Dyonzoria had went to the store he left
 11 the umbrella with him.

12 Q. Left it with who?

13 A. Demetrius.

14 Q. At the store?

15 A. Yes.

16 Q. Which store?

17 A. The Beer Barn.

18 Q. So at that point in time Demetrius got the umbrella?

19 A. Yes.

20 Q. And you say he was hitting Ricky Haynes with the
 21 umbrella?

22 A. Yes, sir.

23 Q. What was Ricky Haynes doing when this happened?

24 A. He wasn't doing nothing. I believe he was
 25 unconscious at the time.

1 Q. Did he have his clothing on?
 2 A. Yes.
 3 Q. Where was he hitting him with the umbrella?
 4 A. Well he was more or less on his stomach, on his
 5 face, at the time; and I believe he was hitting him with
 6 the handle part -- well he was hitting him with the
 7 handle part -- and about in his back and his head. Upper
 8 part of his back.
 9 Q. So you say he was hitting him with the handle part,
 10 meaning he was using this end?
 11 A. Yes.
 12 Q. How far away were you when you saw this?
 13 A. By this time about twenty yards, in the middle of
 14 bike path.
 15 Q. What happened next?
 16 A. Well the guy's pants was like not all the way up.
 17 It was like, you know, about to his thighs. And then
 18 that is when he had got the umbrella and stuck that up
 19 the man's behind.
 20 Q. Who did that?
 21 A. Demetrius.
 22 Q. What end did he use?
 23 A. Used the top end of the umbrella.
 24 Q. You mean the white end?
 25 A. Uh huh.

1 Q. And did you see Demetrius Gathers pull down or touch
 2 the clothing of Ricky Haynes?
 3 A. I can't recall that.
 4 Q. How long, if you can say, did he use this umbrella?
 5 A. About three minutes, I guess. Three minutes at the
 6 most, three to five.
 7 THE COURT: Speak a little louder, son. Speak
 8 into the microphone.
 9 THE WITNESS: About three to five minutes at
 10 the most.
 11 BY MR. CONDON:
 12 Q. Did you hear any noise from Ricky Haynes?
 13 A. I believe he was groaning at the time.
 14 Q. Was it a loud groan or a low groan?
 15 A. A low.
 16 Q. How far away was Ricky Haynes at this point from the
 17 park bench?
 18 A. About ten or fifteen yards.
 19 Q. Ten or fifteen yards?
 20 A. (Nodding affirmatively)
 21 Q. What did Demetrius Gathers do after he used this
 22 umbrella?
 23 A. After that, you know, we called him and tell him
 24 let's go. Then we were walking to the Starcastle
 25 Apartments, and after we had got out the path that is

1 when he ran and rejoined up with us.
 2 Q. He rejoined up with y'all, is that what you are
 3 saying?
 4 A. Yes.
 5 Q. Who was with you at this time?
 6 A. It was Dyonsonia, Demetrius, Zandell and myself.
 7 Q. And you went to the Starcastle Apartments?
 8 A. Yes, we did.
 9 Q. Why did you go there?
 10 A. Well we went there to talk to Hodges Campbell.
 11 Q. Who is Hodges Campbell?
 12 A. He is a friend that goes to school with me.
 13 Q. A friend of whom?
 14 A. All of us.
 15 Q. And he lives in Starcastle?
 16 A. Yes, he does.
 17 Q. Did you go to his apartment?
 18 A. Yes, we did.
 19 Q. Who went to the door?
 20 A. Well we didn't have to go to the door because his
 21 sister was outside talking with some guy.
 22 Q. Whose sister was outside?
 23 A. Hodges.
 24 Q. What is her name?
 25 A. Rose.

1 Q. And what was she doing?
 2 A. She was talking to a guy.
 3 Q. Did you know who she was talking to?
 4 A. No, I do not.
 5 Q. What happened?
 6 A. Well we asked for Hodges. At that time I believe
 7 she said he wasn't home. So we stayed out there and
 8 talked to her for sometime.
 9 Q. Anybody else outside?
 10 A. Well, no. It was just us six.
 11 Q. Anybody else join you?
 12 A. Yes this other dude, Derose, came up. I don't know
 13 who he is. He came up, and all of us was out there
 14 talking.
 15 Q. Did anybody have blood on their clothing?
 16 A. Yes.
 17 Q. Who did?
 18 A. Well Zandell had blood on his shoes and socks and
 19 his shirt. And Demetrius had blood on his shirt. And
 20 Dyonsonia had blood on his shoes and shirt.
 21 Q. When you first came upon Ricky Haynes did he have
 22 any items out?
 23 A. Yes he had a Bible. And some paper.
 24 Q. What was he doing with that?
 25 A. It was just sitting on the bench.

1 Q. A Bible?

2 A. Uh huh.

3 Q. Did you have occasion to go through any of his

4 belongings?

5 A. Yes, I did.

6 Q. What did you do?

7 A. I looked through the bag, through his bags.

8 Q. Looking for something to steal?

9 A. Yes.

10 Q. Did Demetrius Gathers go through his belongings?

11 A. Yes, he did.

12 Q. What did he do?

13 A. Well when he went through his belongings he started

14 throwing things about, just throwing them everywhere,

15 looking through things.

16 Q. When did he go through his belongings?

17 A. Right after I did.

18 Q. Where was Ricky Baynes when this happened?

19 A. He was still on the ground.

20 Q. Anybody touching him?

21 A. No, not at that time.

22 Q. And at what point did Demetrius go through his

23 belongings?

24 A. Well it was like, after I had gone over there and

25 nudged the guy to see if he was all right, at that point.

1 Q. So before the umbrella?

2 A. Yes.

3 Q. How long did it take Demetrius to go through his

4 belongings?

5 A. Not very long. About a minute at the most.

6 Q. Then he went back to him with the umbrella?

7 A. Yes, he did.

8 Q. And hit him over the head?

9 A. Yes, sir.

10 Q. Now when you were at the Starcastle Apartments, did

11 Zandell Hayes have occasion to do anything with a sock?

12 A. Yes, he did. He took his sock off and burned it.

13 Q. Why did he do that?

14 A. Because it had blood on it.

15 Q. What did he do with his sock?

16 A. After he burned it he threw it by a fence.

17 Q. Now a knife, was there a knife there that night?

18 A. Yes.

19 Q. And tell us about this knife. How big was it?

20 A. It was just a regular-size pocket knife about that

21 big at the most. (Indicating)

22 Q. Who had it?

23 A. Demetrius.

24 Q. Where did it come from?

25 A. Well earlier we had found the knife. It was in a

- 1 tool box that they had threw on the ground, and when it
 2 came ---
 3 Q. Wait a minute. They had thrown on the ground?
 4 A. Well, Zandell.
 5 Q. Where was it found?
 6 A. In Ardmore.
 7 Q. Well was it stolen from somebody?
 8 A. It was in the back of a truck.
 9 Q. And where was it in the back of the truck?
 10 A. Just sitting in the back.
 11 Q. In somebody's truck?
 12 A. Yes.
 13 Q. Was it parked in someone's home?
 14 A. It was parked like at the end of the driveway.
 15 Q. Who got the knife?
 16 A. Well after he had picked it up and thrown it in the
 17 street ---
 18 Q. Who did?
 19 A. Zandell. Demetrius looked through it, and we found
 20 the knife in it.
 21 Q. Looked through what?
 22 A. The tools on the ground.
 23 Q. So Zandell picked up a tool box?
 24 A. Yes.
 25 Q. And threw it on the ground?

- 1 A. Yes.
 2 Q. And Demetrius went through it?
 3 A. Yes, he did.
 4 Q. When was this done?
 5 A. When we were on our way to Beer Barn to buy the
 6 beer.
 7 Q. Who got possession of the knife?
 8 A. Demetrius did.
 9 Q. Where did he keep it?
 10 A. He put it in his pocket.
 11 Q. And when you were at the Starcastle Apartments
 12 talking to Rose and others, did you see that knife?
 13 A. Yes.
 14 Q. Tell us about that?
 15 A. Well he had pulled the knife out.
 16 Q. Who did?
 17 A. Demetrius did. And he said that he had forgot about
 18 the knife. So at this time we were on our way to the
 19 bike path, and Dyonzoria had dropped some cologne. So me
 20 and him turned around and went back to Rosemary's house.
 21 Q. Who dropped the cologne?
 22 A. Dyonzoria.
 23 Q. Where did he drop it?
 24 A. It was on the ground, back a couple of feet before
 25 Rose's house.

1 Q. So you are saying all four of you were going back to
 2 the bike path? Is that right?
 3 A. Yes.
 4 Q. Why were you going back to the bike path?
 5 A. Well he went back -- we was going back to the bike
 6 path -- we were going back there -- I can't really say.
 7 Q. Where did you go?
 8 A. Well after we turned around, me and Dyonzoria, we
 9 went back to Rosemary's house.
 10 Q. You and Dyonzoria went back to Rosemary's house?
 11 A. (Nodding affirmatively)
 12 Q. Did you enter that path to go to the bike path?
 13 A. No, we didn't enter it.
 14 Q. You got near it?
 15 A. Yes.
 16 Q. You went back to Rose's house?
 17 A. Yes.
 18 Q. Who had the knife at this time?
 19 A. Dyonz -- Demetrius.
 20 Q. And who went with him back to the bike path?
 21 A. Well, right before we had ran back I believe that
 22 Mr. Hayes had already went back there.
 23 Q. Mr. Hayes, who is that?
 24 A. Zandell.
 25 Q. Zandell Bayes. You call him Zan, don't you?

1 turned around, he came back in about two minutes. And
 2 Demetrius was still out there.
 3 Q. When did Demetrius rejoin you?
 4 A. About three to five minutes after we had went back
 5 to Rose's house.
 6 Q. You weren't on that bike path a second time, were
 7 you?
 8 A. No, I wasn't.
 9 Q. What did Demetrius tell you about what happened on
 10 the bike path when he went out there the second time?
 11 A. Well when he had came back he said that he had
 12 stabbed the guy.
 13 Q. He told you that?
 14 A. Yes.
 15 Q. What did Zandell Hayes say?
 16 A. He didn't say anything.
 17 Q. Anybody wearing glasses that night?
 18 A. Yes Dyonzoria was wearing glasses.
 19 Q. What kind of glasses were these?
 20 A. Malcolm X.
 21 Q. Malcolm X glasses?
 22 A. (Nodding affirmatively)
 23 Q. Describe those, please.
 24 A. Well they are gold frames, kind of small frames,
 25 that kind of tilt forward on your face.

- 1 Q. Did Dyonzoria wear those glasses the whole night?
- 2 A. No. Dyonzoria had them, Demetrius had them, and
- 3 Zandell had them.
- 4 Q. They were passed around?
- 5 A. Yes.
- 6 Q. Now before you and the other individuals came upon
- 7 Ricky Haynes, did you have occasion to go to a white
- 8 female's house?
- 9 A. Yes, we did.
- 10 Q. Who went with you?
- 11 A. Well at this time it was earlier. It was me,
- 12 Demetrius and Zandell at this time.
- 13 Q. You, Demetrius and Zandell?
- 14 A. Yes, it was.
- 15 Q. Where was Dyonzoria Brown?
- 16 A. He was on the bike path at this time.
- 17 Q. About what time was that?
- 18 A. About eight.
- 19 Q. Where was this white female located?
- 20 A. Her house, like, is right next to the bike path.
- 21 Q. Right next to the bike path?
- 22 A. There is a house in between -- two houses in between
- 23 her house and the bike path.
- 24 Q. Did you know her?
- 25 A. Yes, I know her.

- 1 Q. What is her name?
- 2 A. Maryann.
- 3 Q. Maryann. Did you know her last name?
- 4 A. No, I don't.
- 5 Q. What happened at her house?
- 6 A. Demetrius went up to the door. Me and Zandell was
- 7 sitting on the corner waiting for him.
- 8 Q. So y'all sat on the corner?
- 9 A. Yes.
- 10 Q. Demetrius went up to her house?
- 11 A. (Nodding affirmatively)
- 12 Q. How long was he at her house?
- 13 A. About five minutes.
- 14 Q. Did he have your radio, or not?
- 15 A. Yes, he had the radio at the time.
- 16 Q. Now back at the Starcastle, about what time are we
- 17 talking about when Demetrius went back with Zandell on
- 18 the bike path? About what time?
- 19 A. About 9:30 or 10:00.
- 20 Q. Could it be later?
- 21 A. I don't think it was later.
- 22 Q. And you say that Demetrius was on that bike path a
- 23 little bit longer than Zandell?
- 24 A. Zandell was out there a little bit longer than he
- 25 was.

1 Q. But they were both out there at the same time?
 2 A. Yes.
 3 Q. At one point?
 4 A. At one point.
 5 Q. How long were they out there together?
 6 A. About a minute, two minutes at the most.
 7 Q. After they came back, what did y'all do?
 8 A. Well after that we went from there -- we were
 9 leaving. We went from there to Fee McNeal's house.
 10 THE COURT: Who?
 11 MR. CONDON: Fee McNeal, Your Honor.
 12 BY MR. CONDON:
 13 Q. Is he also known as Leon McNeal?
 14 A. Yes.
 15 Q. What about the knife? Who had the knife?
 16 A. Well at this time Demetrius ---
 17 THE COURT: Son, speak into the microphone.
 18 THE WITNESS: Well, at this time Demetrius had
 19 gave the knife to Iandell as we were walking ---
 20 BY MR. CONDON:
 21 Q. Why did he give it to Iandell?
 22 A. --- to McNeal's house. When we were going to
 23 McNeal's house, Mr. Hayes -- well, Iandell was angry with
 24 him because earlier that day McNeal had pulled a gun out
 25 on his brother.

1 Q. McNeal had pulled a gun out on Iandell Hayes'
 2 brother?
 3 A. Yes, he did.
 4 Q. Where did Leon McNeal or Fee McNeal live in relation
 5 to Starcastle?
 6 A. Like right across the corner from it.
 7 Q. Close by?
 8 A. Yes.
 9 Q. How long did it take you to get to his house?
 10 A. About two minutes at the most.
 11 Q. What happened there?
 12 A. Well, Dyonseria called him outside, and Iandell and
 13 McNeal was talking. They were going to fight, but then
 14 all of a sudden Fee McNeal ran in the house.
 15 Q. And Iandell had the knife at that time?
 16 A. Yes, it was in his hand.
 17 Q. What was Demetrius Gathers doing at that time?
 18 A. We were just standing around.
 19 Q. You and Demetrius?
 20 A. All of us.
 21 Q. After Leon McNeal ran away what did y'all do?
 22 A. Well we ran back to the Starcastle Apartments for a
 23 brief moment, not even a minute, and from there we went
 24 down to Demetrius' house.
 25 Q. Where does Demetrius live?

1 A. A street over from Dyonzoria. I don't know the
 2 street.
 3 Q. Close by?
 4 A. Yes, close by.
 5 Q. What happened at Demetrius Gathers' house?
 6 A. Well he went home and changed shirts.
 7 Q. How did he change shirts?
 8 A. Well he went into the back yard and got a different
 9 shirt.
 10 Q. Why did he change his shirt?
 11 A. Because he had blood on his shirt.
 12 Q. What happened after that?
 13 A. Well, after that we went to Dyonzoria's house
 14 because he wanted to change.
 15 Q. How far away does Dyonzoria live?
 16 A. He lives a street over from Demetrius.
 17 Q. Did he change his clothing?
 18 A. Yes, he did.
 19 Q. What clothing did he change?
 20 A. He changed his shoes and his pants.
 21 Q. Why?
 22 A. Well his shoes had blood ---
 23 MR. KENT: Objection, Your Honor. Calls for a
 24 conclusion.
 25 THE COURT: Sustained.

1 BY MR. CONDON:
 2 Q. Did he have any blood on his clothing?
 3 A. Yes, his shoes.
 4 Q. Where else?
 5 A. And his shirt.
 6 Q. After he changed his clothing, what happened?
 7 A. Well after that we caught a ride. And ---
 8 Q. You caught a ride?
 9 A. Yes, with Wendell Lee.
 10 Q. With who?
 11 A. Wendell Lee.
 12 Q. Wendell Lee? And where did you catch this ride?
 13 A. Right in front of Dyonzoria's house.
 14 Q. Who is Wendell Lee?
 15 A. He is a guy that went to school with me, a pretty
 16 good friend that lives right around the corner from me.
 17 Q. And what was he doing?
 18 A. Him and this other guy was riding around, they said.
 19 Q. What other guy?
 20 A. I can't remember his name.
 21 Q. Did he in fact give you a ride?
 22 A. Yes, he did.
 23 Q. Who got in his car?
 24 A. Well all four of us got in the car.
 25 Q. Where did you go?

1 A. From there he took Demetrius and Dyonzoria to the
 2 20th Century Fox. He took me and Sandell home.
 3 Q. He took Demetrius and Dyonzoria to 20th Century Fox?
 4 A. Yes.
 5 Q. How far away is 20th Century Fox?
 6 A. It's not very far away.
 7 Q. What is 20th Century Fox?
 8 A. A club.
 9 Q. Did you see Demetrius and Dyonzoria get out of the
 10 car?
 11 A. Yes.
 12 Q. Did you see what they did?
 13 A. They walked through the park to go to the club
 14 because he didn't let them off right at the club. He let
 15 them off at the park, and the club is in front of the
 16 park.
 17 Q. And what did you do?
 18 A. Well I went home.
 19 Q. Who was let off first?
 20 A. Sandell.
 21 Q. And Sandell lives near you?
 22 A. It's pretty close to me.
 23 Q. Then you were let off?
 24 A. Yes.
 25 Q. Went to bed?

1 A. Yes.
 2 Q. And when did you turn yourself in?
 3 A. That Tuesday.
 4 Q. Tuesday?
 5 A. (Nodding affirmatively)
 6 Q. Charged with murder and criminal sexual conduct
 7 first?
 8 A. Yes.
 9 Q. You gave a statement, didn't you?
 10 A. Yes, we did.
 11 Q. Yes, you did?
 12 A. I did.
 13 Q. And this statement was given at the City of
 14 Charleston Police Department?
 15 A. Yes, it was.
 16 Q. And you were advised of your rights?
 17 A. Yes.
 18 Q. Now you have changed that statement, haven't you?
 19 A. Yes, I have.
 20 Q. When did you change it?
 21 A. About two weeks ago.
 22 Q. About two weeks ago?
 23 A. (Nodding affirmatively)
 24 Q. And your first statement?
 25 A. I gave that in September.

1 Q. Why did you change it?
 2 A. Because over the time that I have been to County
 3 Jail I remember lots of things since I gave the first
 4 statement. And at the time that I gave the first
 5 statement I was quite confused.
 6 Q. Did you change your statement totally?
 7 A. No.
 8 Q. How much beer did you have to drink that night?
 9 A. Well that night we only had three apiece, but
 10 earlier that day -- well it was about three o'clock -- I
 11 believe we drank a quart.
 12 Q. A quart of what?
 13 A. Bull.
 14 Q. Of what?
 15 A. Bull.
 16 Q. Bull. When you say we, who is we?
 17 A. It was me, Demetrius, Zandell and another guy.
 18 Q. Now when you came upon Ricky Haynes, you say you
 19 went through his personal belongings?
 20 A. Yes.
 21 Q. Did you see any alcohol?
 22 A. Yes, he had two -- well he was drinking one, and he
 23 had another one sitting on the bench, California Coolers,
 24 some sort of coolers.
 25 Q. Some sort of wine?

1 A. Yes.
 2 Q. What happened to that wine?
 3 A. Well one of them someone took.
 4 Q. Someone took? Who took it?
 5 A. I can't recall who took it.
 6 Q. What happened with it?
 7 A. We drank it.
 8 Q. Where did you drink it?
 9 A. We were out there in front of Starcastle.
 10 Q. In front of Starcastle?
 11 A. Yes.
 12 Q. Did you drink it before or after Demetrius and
 13 Zandell went back to the bike path?
 14 A. I believe that was after.
 15 Q. After?
 16 A. (Nodding affirmatively)
 17 Q. Did you enjoy it?
 18 A. It was around between four of us, so not much of us
 19 got much.
 20 Q. Answer any questions the defendant may have.
 21 MR. KENT: Approach the bench, Your Honor?
 22 THE COURT: All right.
 23 (Thereupon, Mr. Kent approached the bench and a
 24 bench conference was held.)
 25 THE COURT: Mr. Foreman, ladies and gentlemen

1 of the jury, the Court is going to take just a brief
 2 recess in between the direct examination and the
 3 cross-examination of this witness. Would you be
 4 kind enough to retire to your jury room, please?

5 (Thereupon, at 11:14 a.m., the trial of this case
 6 was then recessed until 11:35 p.m.)

7 (The following takes place outside the presence of
 8 the jury.)

9 THE COURT: Ready, Mr. Kent?

10 MR. KENT: Ready, Your Honor.

11 THE COURT: Ready, Mr. Condon?

12 MR. CONDON: State's ready, Your Honor.

13 THE COURT: Bring the jury, please. If they're
 14 ready.

15 (The following takes place within the presence of
 16 the jury.)

17 THE COURT: Mr. Kent.

18 MR. KENT: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. KENT:

21 Q. Mr. Hardrick, your real name is Esdavan; is that
 22 correct?

23 A. Yes, it is.

24 THE COURT: Mr. Hardrick, bring that microphone
 25 up a little bit. All right.

1 BY MR. KENT:

2 A. How old are you now, son?

3 A. Eighteen.

4 Q. How old were you in September of last year?

5 A. Seventeen.

6 Q. Were you going to school?

7 A. Yes, I was.

8 Q. Where?

9 A. Saint Andrews High.

10 Q. You knew Zandell at that time?

11 A. Yes, I did.

12 Q. Did he go to high school with you?

13 A. Yes, he did.

14 Q. How old is Zandell?

15 A. He is eighteen.

16 Q. Was he seventeen in September of last year?

17 A. Yes, he was.

18 Q. It's correct, isn't it, that you have known Zandell
 19 for five or six years?

20 A. Yes, it is.

21 Q. You all are pretty good friends, aren't you?

22 A. Yes, we are.

23 Q. Hang around a lot together?

24 A. No, we don't.

25 Q. You don't hang around after school and so forth?

- 1 A. Every now and then.
 2 Q. Every week?
 3 A. No.
 4 Q. Are you familiar with a little store on Magnolia
 5 Road known as Wash's Place?
 6 A. Yes, I am.
 7 Q. Do you go there quite often?
 8 A. Yes, I do.
 9 Q. Iandell does too, don't he?
 10 A. Yes, he does.
 11 Q. Do they sell a lot of beer there?
 12 A. Yes, they do.
 13 Q. You all hang out there a lot, don't you?
 14 A. No, we don't.
 15 Q. Do you just go there to get people to buy beer for
 16 you and Iandell?
 17 A. Yes.
 18 Q. Neither one of you are old enough to buy it
 19 yourselves, isn't that right?
 20 A. Yes.
 21 Q. Did either you or Iandell buy beer on the night in
 22 question here?
 23 A. We put together money.
 24 Q. I mean, did you make the actual purchase?
 25 A. No, we didn't.

- 1 Q. Where were you when you made that statement, that
 2 second one, a couple weeks ago?
 3 A. In a conference room.
 4 Q. Where?
 5 A. Right here in the back, back there.
 6 Q. Are you referring to a conference room here in the
 7 courthouse?
 8 A. Yes, I am.
 9 Q. Did you talk to anybody else on March 5th?
 10 A. My lawyer.
 11 Q. Did you talk to any lawyers with the State?
 12 A. Yes, I did.
 13 Q. Do you remember who they were?
 14 A. Yes, I do.
 15 Q. Who were they?
 16 A. It was Mr. Kent ---
 17 Q. No, I am talking about the day in which you made the
 18 second written statement, the one that was taken by
 19 Sergeant Gordon?
 20 A. Well the only lawyer I talked to was mine.
 21 Q. Oh, I see. Now before that second written statement
 22 was made a couple of weeks ago, you had in fact met with
 23 some of the prosecutors, hadn't you?
 24 A. Yes, I have.
 25 Q. Several times?

1 A. Yes, sir.
 2 Q. Several times during the few weeks right before you
 3 made that second written statement?
 4 A. Yes, it was.
 5 Q. Did you know when you went home that Saturday night,
 6 when Wendell Lee took you home, did you know that Richard
 7 Haynes had been stabbed with a knife?
 8 A. Yes, I did.
 9 Q. Because Landell told you he had done it?
 10 A. No, I don't. He didn't say that.
 11 Q. You didn't see it?
 12 A. No, I didn't.
 13 Q. You got copies of both these statements you made,
 14 both the written statements?
 15 A. I don't have copies.
 16 Q. Were you provided copies?
 17 A. Yes, I was.
 18 Q. You can read?
 19 A. Yes, I can.
 20 Q. You have read them before today?
 21 A. Yes, sir.
 22 Q. Now on Saturday, September 13th, you all in fact --
 23 you and Demetrius and Landell, the three of you were in a
 24 number of other places that you haven't mentioned, isn't
 25 that right?

1 A. Yes, I was.
 2 Q. And you didn't mention them because you didn't think
 3 they were important?
 4 A. No, I didn't.
 5 Q. Well you were at the Ashleyville Playground sometime
 6 in the late afternoon, isn't that right?
 7 A. Yes, we were.
 8 Q. And you all, with some other fellows, got a ride
 9 with a Mr. Simmons ---
 10 A. Yes, it was.
 11 Q. --- to Orleans Gardens?
 12 A. Yes, sir.
 13 Q. And that is a group of apartments in an area behind
 14 Citadel Hall?
 15 A. Yes, it is.
 16 Q. And you were there for just a few minutes?
 17 A. Yes.
 18 Q. And Landell was there because he thought he knew
 19 somebody who might have some marijuana, isn't that right?
 20 A. Yes, it is.
 21 Q. But Landell wasn't able to find the fellow that he
 22 knew that had the marijuana, is that right?
 23 A. Right.
 24 THE COURT: Son, take your hand from your
 25 mouth.

1 BY MR. KENT:
 2 Q. You wanted to smoke some marijuana, but it wasn't
 3 available, is that it?
 4 A. Yes, it is.
 5 Q. From there this group got a ride to Moska's Pool
 6 Hall on Wappoo Road, isn't that right?
 7 A. Yes, it is.
 8 Q. Now did you do any beer drinking there?
 9 A. I didn't.
 10 Q. Who did?
 11 A. Well Dyonzoria, Demetrius, Mr. Hayes.
 12 Q. Mr. Hayes. Now this was all before you ever started
 13 out on all this walking back and forth between Ardmore
 14 and the Magic Mart, isn't that right?
 15 A. Yes, it is.
 16 Q. Now this Magic Mart you are referring to is the
 17 convenience store on Highway 61, just west of Playground
 18 Road, isn't that right?
 19 A. Yes, it is.
 20 Q. And isn't it a fact that, when you all go there from
 21 this area of the Starcastle Apartment and the bike path,
 22 that you all cut through the apartments that are right
 23 behind the Magic Mart?
 24 A. Yes, we do.
 25 Q. And in doing so it's just a matter of a few blocks

1 until you are in the West Oak Forest section; isn't that
 2 right?
 3 A. Yes, it is.
 4 Q. And, of course, the West Oak Forest section is right
 5 alongside of the Starcastle Apartments, isn't that right?
 6 A. Yes, it is.
 7 Q. And isn't it a fact that there aren't any streets
 8 that run from Ardmore over into West Oak Forest? Isn't
 9 that right?
 10 A. Yes.
 11 Q. There is a tract of land that runs from Highway 17
 12 back towards Highway 61 that separates those two
 13 subdivisions? Is that right?
 14 A. Yes, it is.
 15 Q. Now it is in that tract of land that separates those
 16 two areas that this portion of the bike path where the
 17 bench and so forth is. That is where it's located, isn't
 18 that right?
 19 A. I don't understand you.
 20 Q. Well, as you go out west -- or south as the signs
 21 say -- on Highway 17 from town, the first subdivision you
 22 come to is West Oak Forest?
 23 A. From Highway 17?
 24 Q. Yes. And talking about the areas that we are
 25 concerned with here. Doesn't West Oak Forest come before

1 Ardmore?
 2 A. Yes, it does.
 3 Q. And between those two areas there is a tract of land
 4 that separates them, and there is no road or street that
 5 goes between those two places, isn't that right?
 6 A. Yes.
 7 Q. But they are connected by the so-called Bike Path
 8 Park, isn't that right?
 9 A. Yes, it is.
 10 Q. It is in this area that the Starcastle Apartments
 11 are also located? Yes?
 12 A. Yes, it is.
 13 Q. And the Starcastle Apartments are a series of
 14 two-story buildings that are built all in a single file;
 15 isn't that right?
 16 A. Yes, it is.
 17 Q. And that tract of land separates the West Oak Forest
 18 section from the Ardmore section, right?
 19 A. Yes, it does.
 20 Q. And when you get on the bike path from the short
 21 path that leads from the Starcastle parking lot, you are
 22 actually moving diagonally between the West Oak Forest
 23 section that you all live in and the Ardmore section,
 24 isn't that right?
 25 A. Yes.

1 Q. It's a very short distance, isn't it?
 2 A. Yes, it is.
 3 Q. Now let's go to the Starcastle here for a minute so
 4 we can understand that. Starcastle Apartments are all in
 5 a row, and that row is perpendicular -- do you know what
 6 I am saying? At a right angle to the bike path, more or
 7 less?
 8 A. (Nodding affirmatively)
 9 Q. You are indicating yes?
 10 A. Yes.
 11 Q. Sir, the Court Reporter don't pick up nods.
 12 A. Yes.
 13 Q. Now there is a long narrow parking lot that runs the
 14 length of the Starcastle?
 15 A. Yes.
 16 Q. And at the end of those buildings nearest the bike
 17 path there is a street that goes directly into the West
 18 Oak Forest section, isn't that right?
 19 A. Yes.
 20 Q. But as you go on up the parking lot and driveway
 21 that runs along the apartments, there is yet another
 22 little street or driveway that goes out on Rice Drive in
 23 West Oak Forest, isn't that right?
 24 A. Yes, it does.
 25 Q. And very near that driveway is Leon McNeal's house,

1 right?

2 A. To the bike -- no, it don't.

3 Q. Don't it come right up to the bike path right away?

4 A. Oh, yes, it does end.

5 Q. It runs from 17, dog legs around on Evergreen and

6 proceeds on to the bike path, isn't that right?

7 A. Yes, it is.

8 Q. And it dead ends at both ends.

9 A. Okay.

10 Q. Now the area on Sequoia that is right there where it

11 ends at the bike path, that is a very well lit area,

12 isn't it?

13 A. Yes, it is.

14 Q. There is a big street light there?

15 A. Yes, it is.

16 Q. But this is some distance from the bench, isn't that

17 right?

18 A. Yes, it is.

19 Q. As you proceed up the bike path towards West Oak

20 Forest and that bench, behind which is the little path

21 that goes into the Starcastle lot, it gets darker and

22 darker, isn't that right?

23 A. Yes, it does.

24 Q. Now at this particular time of year in September of

25 1986 it was still very green all along that path, isn't

1 that right?

2 A. Yes, it was.

3 Q. All the trees had their leaves. It's very lush and

4 pretty in through there, isn't that right?

5 A. Yes.

6 Q. And in fact, as you are going from that light at the

7 end of Sequoia up to the bench, there is a lot on your

8 left -- the Ardmore section -- I mean, pardon me, the

9 West Oak Forest area, that same side on your left as you

10 are going towards the bench, there is a big lot of trees

11 there and underbrush and so forth?

12 A. Yes, it is.

13 Q. Until you get to the area directly behind the bench,

14 and there is a stand of quite large trees and lots of

15 underbrush separating the Starcastle parking lot from the

16 bench, right?

17 A. Yes.

18 Q. And it's through that area that this little foot

19 path runs?

20 A. Yes.

21 Q. And that time of year it's very heavily grown up and

22 green and so forth, isn't that right?

23 A. Yes, it is.

24 Q. None of you all had any flashlights that night?

25 A. No.

1 Q. Never saw a flashlight that night, did you, while
 2 all this was going on?
 3 A. No.
 4 Q. No?
 5 A. No.
 6 Q. Thank you. I believe you stated in one of these
 7 statements that you guys generally hang out at this
 8 bench?
 9 A. Yes, we do.
 10 Q. Do a lot of drinking there?
 11 A. Yes.
 12 Q. Do a lot of marijuana there?
 13 A. Yes, we do.
 14 Q. Use any other drugs?
 15 A. No.
 16 Q. How many times that night -- I don't understand
 17 this. How many times did you go back and forth from the
 18 Starcastle Apartments to the bench area of this bike
 19 path?
 20 A. I didn't go back to the bench once I went into
 21 Sequoia Apartments -- I mean, Starcastle Apartments.
 22 Q. So you personally never did go back?
 23 A. No, I did not.
 24 Q. Now before you got to the bike path, the four of
 25 you, and came upon Mr. Haynes, the last place you had

1 been was walking on Sequoia Street, isn't that right?
 2 A. No, it isn't.
 3 Q. Before you came upon Mr. Haynes the first time you
 4 were coming from the Beer Barn and Sequoia, isn't that
 5 right?
 6 A. We were coming from the Beer Barn.
 7 Q. Wouldn't you have come on out Sequoia to the end
 8 there to get on the bike path?
 9 A. We didn't come out that end.
 10 Q. Which way did you come out?
 11 A. We walked down Balsam Street.
 12 Q. Okay. Doesn't Balsam run into Sequoia?
 13 A. We didn't walk up far enough to go to Sequoia.
 14 Q. Did you cut through somebody's yard on Balsam?
 15 A. No. There is a bike path that makes a right turn
 16 right into Balsam Street.
 17 Q. Right into Balsam Street?
 18 A. Yes, it does.
 19 Q. Well, did you come into Ardmore from the Beer Barn
 20 on White Oak Drive?
 21 A. Yes, we did.
 22 Q. Did you walk all the way up to Balsam and make the
 23 right-hand turn?
 24 A. Yes, we did.
 25 Q. You walked past Evergreen?

- 1 A. Evergreen is a street crossover from Balsam.
- 2 Q. And parallel to it, isn't that right?
- 3 A. Yes, it is.
- 4 Q. Wasn't it while you were walking on Balsam and
- 5 before you got on the path that Zandell Hayes went into
- 6 the man's truck and got the tool box out?
- 7 A. That was before we went to the Beer Barn.
- 8 Q. Zandell was acting kind of wild, wasn't he?
- 9 A. Yes, he was.
- 10 Q. Zandell went into this stranger's truck, took one of
- 11 his tool boxes, and walked it down a couple of houses and
- 12 threw it up in the air and let it crash on the street,
- 13 isn't that right?
- 14 A. Yes, it is.
- 15 Q. And he didn't see anything he liked in there because
- 16 it was nothing but a lot of nuts and bolts and spare
- 17 parts, but he found a knife, isn't that right?
- 18 A. He didn't find the knife.
- 19 Q. Isn't it a fact that Zandell stole the tool box?
- 20 A. Yes, it is.
- 21 Q. Isn't it a fact that Zandell threw it up in the air
- 22 and crashed it on the street, right under a street light
- 23 just a few doors down from this man's house where he
- 24 stole the box?
- 25 A. Where he threw it there is no street light.

- 1 Q. This truck was located at a house on the corner,
- 2 wasn't it?
- 3 A. Yes, it was.
- 4 Q. Corner of Balsam and Locust?
- 5 A. Yes, it is.
- 6 Q. When he got the tool box didn't he go across Locust,
- 7 staying on Balsam, just a few doors, and crash the tool
- 8 box on the street?
- 9 A. Yes, it is.
- 10 Q. You don't recollect a street light being out there?
- 11 A. No, I don't.
- 12 Q. All four of you were together?
- 13 A. Yes, we were.
- 14 Q. Did that bother you?
- 15 A. No, it don't.
- 16 Q. It didn't bother you that he broke this man's tool
- 17 box and got his belongings?
- 18 A. He didn't take anything from it.
- 19 Q. He just took everything first?
- 20 A. Yes.
- 21 Q. Well did that bother you?
- 22 A. No, it didn't.
- 23 Q. You are accustomed to that kind of behavior when you
- 24 are drinking?
- 25 A. No, I am not.

1 Q. You just didn't see anything wrong with it?
 2 A. Well I saw something wrong with it, but it didn't
 3 ---
 4 Q. Not enough to bother you?
 5 A. It didn't bother me.
 6 Q. Now was this before or after you all were at the
 7 Magic Mart?
 8 A. This was after.
 9 Q. When you were at the Magic Mart isn't it a fact that
 10 you bought some beer there too?
 11 A. We didn't buy any beer.
 12 Q. You didn't buy any Lowenbrau there?
 13 A. We didn't buy any beer.
 14 Q. Did you buy any Lowenbrau at all that night?
 15 A. No, we didn't.
 16 Q. After the knife was taken, you go to the Beer Barn,
 17 and from the Beer Barn you come back; is that correct?
 18 A. Come back to the bike path.
 19 Q. Isn't it a fact that the last stop y'all made was at
 20 Maryann's place before you went to the path?
 21 A. No, it isn't.
 22 Q. Had you already been there?
 23 A. Yes, we were.
 24 Q. When was that? Before or after the Magic Mart?
 25 A. That was before.

1 Q. On the way to Magic Mart?
 2 A. We were on the way to the bike path at that time.
 3 Q. Now the umbrella belongs to Dee Brown, isn't that
 4 right?
 5 A. Yes, it does.
 6 Q. When you all left Moska's Pool Hall, it was just
 7 you, Mr. Hayes -- Zandell ---
 8 A. Yes, it was.
 9 Q. --- and Demetrius, isn't that right?
 10 A. Yes, it is.
 11 Q. You don't meet Dee Brown or Dyonzoria Brown until
 12 you get into Ardmore Subdivision, isn't that right?
 13 A. Right.
 14 Q. He had the umbrella at that time?
 15 A. No we didn't. Dee Brown was not with us at that
 16 time.
 17 Q. Well, when you met him did he have the umbrella?
 18 A. Yes, he did.
 19 Q. And his Malcolm X glasses?
 20 A. Yes.
 21 Q. Dee Brown is something of a dandy or something?
 22 What is the -- are there any lenses in these Malcolm X
 23 glasses?
 24 A. No, it isn't.
 25 Q. They are just frames, aren't they?

- 1 A. Yes, it is.
- 2 Q. You have known Dee Brown for some time too, right?
- 3 A. Yes.
- 4 Q. A year or so?
- 5 A. Yes.
- 6 Q. Does he always carry these -- was it raining that
- 7 night?
- 8 A. No, it wasn't.
- 9 Q. Any chance of rain that night that you remember?
- 10 A. Not that I remember.
- 11 Q. So you come back from the Beer Barn, and you have
- 12 got just two six packs now?
- 13 A. Yes.
- 14 Q. There was nothing left from Moska's Pool Hall?
- 15 A. No.
- 16 Q. Nothing left from earlier in the afternoon?
- 17 A. No.
- 18 Q. And you come up to this bench, and there is Mr.
- 19 Haynes?
- 20 A. Yes.
- 21 Q. And he apparently is changing clothes?
- 22 A. Yes.
- 23 Q. His trousers are not all the way up?
- 24 A. No they weren't. He was on the verge of pulling
- 25 them up.

- 1 Q. So his pants were down. Did he seem embarrassed to
- 2 you?
- 3 A. No.
- 4 Q. He sat right down though, once he got them up?
- 5 A. Yes, he did.
- 6 Q. And you all sat down next to him?
- 7 A. Yes.
- 8 Q. And you began drinking, is that right?
- 9 A. Yes.
- 10 Q. How many beers would you say you drank at that
- 11 point?
- 12 A. Two.
- 13 Q. And how many would you say -- do you recollect how
- 14 many Zan Hayes drank at that point?
- 15 A. Two.
- 16 Q. And Demetrius?
- 17 A. Two.
- 18 Q. And Dee Brown?
- 19 A. Two.
- 20 Q. This took some time, didn't it?
- 21 A. Yes, it did.
- 22 Q. Who owned the radio? Whose radio was that?
- 23 A. It was a friend's.
- 24 Q. Whose friend?
- 25 A. A friend of all of us.

1 Q. But the friend had given it to -- do you know the
 2 guy's name?
 3 A. Shawn.
 4 Q. Shawn had loaned the radio to Demetrius, isn't that
 5 right?
 6 A. Yes, it was.
 7 Q. Demetrius had been carrying the radio, isn't that
 8 right?
 9 A. He gave it to me, and I was carrying the radio.
 10 Q. All night?
 11 A. We were switching back and forth.
 12 Q. What were you all doing while you are drinking all
 13 this beer there at the bench?
 14 A. Listening to the radio.
 15 Q. Did you talk to Mr. Haynes?
 16 A. We told him hello.
 17 Q. Anybody else talk to Mr. Haynes other than that?
 18 A. Well Demetrius was talking to him, and he said that
 19 he didn't feel like talking to him.
 20 Q. And there wasn't anything else to it? There was no
 21 -- two beers, how long does it take you to take two
 22 beers, to drink them?
 23 A. Not very long.
 24 Q. We are talking about twelve ounce cans here, aren't
 25 we?

1 A. Yes, we are.
 2 Q. You never said anything to Mr. Haynes yourself?
 3 A. Just hello.
 4 Q. Were you paying much attention to Demetrius and Mr.
 5 Haynes?
 6 A. I wasn't paying attention to their conversation.
 7 Q. Were you talking to Dee Brown?
 8 A. I was talking with Zan at the time.
 9 Q. Well let's go to right when Mr. Haynes, Richard
 10 Haynes, is socked, punched the first time. What were you
 11 doing at that point in time? Who were you talking with?
 12 A. I was on the bench with the radio at that time.
 13 Q. Right alongside Mr. Haynes?
 14 A. Yes, I was.
 15 Q. Anybody else on the bench with you?
 16 A. Dee Brown.
 17 Q. Were you talking with Dee Brown?
 18 A. We were listening to the radio, talking.
 19 Q. Was Richard Haynes seated between you and Dee Brown?
 20 A. No, he wasn't.
 21 Q. Well who was on the end of the bench? Was Mr.
 22 Haynes on an end?
 23 A. Yes, he was.
 24 Q. Who was on the other end?
 25 A. I was.

- 1 Q. So Dee Brown was between you and Richard Haynes?
 2 A. Yes, he was.
 3 Q. Are you sure -- as you sat there listening to the
 4 radio with Mr. Brown between you and Richard Haynes, are
 5 you sure who punched Mr. Haynes first?
 6 A. Yes, I was.
 7 Q. And you were talking to Zan Hayes at the time this
 8 happened?
 9 A. I was talking to Dee Brown at the time.
 10 Q. Mr. Haynes goes to the ground with the first punch?
 11 A. When Demetrius had hit him, he fell back into
 12 Zandell.
 13 Q. I believe that is one of the points you changed in
 14 your statements, is that right?
 15 A. Yes, it was.
 16 Q. And any particular reason you have for changing
 17 that?
 18 A. Because at the time that I made the statement I
 19 forgot a lot of things, and I was quite confused.
 20 Q. But the second statement you made a couple weeks
 21 ago, the man is struck, goes into Zan's arms, and then
 22 Zan starts beating on him?
 23 A. Yes, he hits him.
 24 Q. And you stayed on the bench?
 25 A. Yes, I did.

- 1 Q. But Dee Brown gets up?
 2 A. Yes, he did.
 3 Q. And he joins into the tussle?
 4 A. Not right then. After Demetrius had already pinned
 5 the guy on the ground.
 6 Q. Now did Demetrius pin Richard Haynes on the ground
 7 right there by the bench?
 8 A. No, he didn't.
 9 Q. It was on up the path some?
 10 A. Yes, it was.
 11 Q. I believe you have testified about ten yards?
 12 A. Yes.
 13 Q. How many feet in a yard?
 14 A. I can't recall.
 15 Q. You don't know how many feet in a yard?
 16 A. No, I don't.
 17 Q. Well I am standing from you, sir, about the length
 18 of this jury box?
 19 A. Yes, you are.
 20 Q. Were they that close or closer?
 21 A. About that distance.
 22 Q. About that distance? Once Demetrius is fighting
 23 with Richard Haynes on the ground, that is when Dee Brown
 24 gets into it?
 25 A. Yes, he does.

1 Q. And then he comes over and hits this man with the
 2 bottle?
 3 A. He kicked him a couple of times first.
 4 Q. He kicked him first?
 5 A. Uh huh.
 6 Q. Where did he kick him?
 7 A. Along the ribs.
 8 Q. Did the man resist after that? Or do you remember?
 9 A. He was on the ground. He was pinned. He couldn't
 10 do anything.
 11 Q. You were also separated from him by thirty or so
 12 feet, ten yards?
 13 A. (Nodding affirmatively)
 14 Q. And three men. Isn't that right?
 15 A. Yes.
 16 Q. And Zan, Demetrius and Dee Brown are all around this
 17 fellow when this is going on, isn't that correct?
 18 A. Yes, it was.
 19 Q. And you remained on the bench, is that right?
 20 A. Yes, it is.
 21 Q. This didn't bother you, either?
 22 A. It had bothered me, but I couldn't do much about it.
 23 Q. But you stayed right there, is that right?
 24 A. I moved after Dyonzoria had hit the guy in the head
 25 with the bottle a couple times, and Demetrius, to check

1 and see if he was all right.
 2 Q. Was that before or after you went into his
 3 belongings?
 4 A. That was right before.
 5 Q. Right before. So you also assured yourself that he
 6 was disabled before you went into his bag of belongings,
 7 isn't that right?
 8 A. He was unconscious, yes, he was.
 9 Q. You knew that. Is that right?
 10 A. No, I didn't at the time. He was groaning.
 11 Q. This man had two bags of belongings, do you
 12 remember?
 13 A. Yes, he did.
 14 Q. Okay. Did you go into either of them while these
 15 three fellows are beating on Mr. Haynes?
 16 A. I looked in the bag.
 17 Q. Didn't see anything you liked?
 18 A. No, I didn't.
 19 Q. Now they stop beating him at some point, correct?
 20 A. Yes, they do.
 21 Q. And it's at that point that you say Demetrius
 22 Gathers jabbed this man in the behind with the umbrella?
 23 A. Well at the point that he did that I was in the
 24 path.
 25 Q. You were in the path?

1 A. (Nodding affirmatively)
 2 Q. You had already started to go along with -- who, Dee
 3 Brown?
 4 A. And Zandell.
 5 Q. And you were a ways into the path?
 6 A. We were like in the middle of the path.
 7 Q. In the middle? Where was this man's body located at
 8 that point?
 9 A. About ten yards.
 10 Q. Up away from the bench?
 11 A. Yes.
 12 Q. Did you testify, sir, that Demetrius Gathers probed
 13 this man with the tip of this umbrella in his behind for
 14 two or three minutes?
 15 A. Well he didn't do that for two or three minutes, but
 16 he was beating the man with the umbrella for about that
 17 long.
 18 Q. You are saying before he jabbed him with it he
 19 struck him over the head for two or three minutes?
 20 A. It took about two or three minutes for him to do all
 21 of that.
 22 Q. You stood there and watched?
 23 A. We were in the path.
 24 Q. Back in the path?
 25 A. We had left at one point.

1 Q. You had already left at one point then?
 2 A. After he had stuck the man with the umbrella.
 3 Q. No, no. I am talking about before that.
 4 A. Huh uh.
 5 Q. My understanding is that you, Zandell and Dee Brown
 6 were on your way away from the scene, leaving Demetrius
 7 Gathers there; and you are already well into the path,
 8 about halfway into the apartments, in the middle of these
 9 woods, and you are looking back, in the nighttime, into
 10 the dark area of this path, through these woods where
 11 there is -- there is no lights at all in the woods, are
 12 there?
 13 A. No, there isn't.
 14 Q. And you had no flashlight?
 15 A. No, I didn't. No.
 16 Q. And you watched this from the path for two or three
 17 minutes?
 18 A. You can see from the path to where he was laying.
 19 Q. I understand what you are saying. Is it your
 20 testimony that you stood there and watched all this up in
 21 the path for two or three minutes?
 22 A. Yes.
 23 Q. And you had not at that point, of course, seen the
 24 knife out?
 25 A. No.

1 Q. So you don't know anything about this man being
 2 stabbed at that point?
 3 A. No, I don't.
 4 Q. Fact of the matter is you never saw any stabbing
 5 with the knife, isn't that right?
 6 A. That's right.
 7 Q. Are you saying that you saw Demetrius stop with the
 8 umbrella and then come to you?
 9 A. No.
 10 Q. You all went into the Starcastle parking lot while
 11 he was still beating this man with the umbrella?
 12 A. Yes, we were.
 13 Q. So you didn't see the whole thing?
 14 A. No.
 15 Q. Unless, of course, you could see it from the parking
 16 lot in the Starcastle Apartments?
 17 A. You can't see it from there.
 18 Q. You can't see it. But you can see it from about
 19 halfway in the path?
 20 A. Yes, you can.
 21 Q. Now that's not exactly the way you told it when you
 22 made the first written statement to the police, is it?
 23 A. No, it isn't.
 24 Q. When you made the first statement to the police you
 25 said Demetrius Gathers jabbed this man in the behind even

1 before you went over and nudged him with your foot,
 2 correct?
 3 A. Correct.
 4 Q. That was the September 16th statement?
 5 A. Yes, it was.
 6 Q. A few hours less than three days after the fact?
 7 A. Yes, it is.
 8 Q. Did you know at that time -- were you sure when you
 9 were at the police station and before you ever talked to
 10 the police, did you know that this man had been jabbed in
 11 the behind with the umbrella?
 12 A. Yes, I did.
 13 Q. Did the police tell you that it had been stuck
 14 through his rectum and into his bowels, the peritoneum?
 15 A. No, they didn't
 16 Q. They didn't tell you about that? Did they show you
 17 the umbrella?
 18 A. Yes.
 19 Q. They did? ?
 20 A. Not there, then.
 21 Q. Before you made your statement?
 22 A. No.
 23 Q. When you were talking to the police, on September
 24 16th, did you know that Demetrius Gathers had already
 25 contacted the police?

1 A. No, I did not.
 2 Q. You didn't have any idea that Demetrius Gathers had
 3 already contacted the police the day before?
 4 A. No, I did not.
 5 Q. You didn't know that Demetrius Gathers had already
 6 showed them where Zandell Hayes lived?
 7 A. No, I didn't.
 8 Q. Now the 13th was a Saturday, correct?
 9 A. Yes.
 10 Q. The 14th was Sunday?
 11 A. Yes.
 12 Q. The 15th was Monday?
 13 A. Yes.
 14 Q. And the 16th was Tuesday?
 15 A. Yes.
 16 Q. Monday and Tuesday were school days?
 17 A. Yes, it was.
 18 Q. Did you go to school with Zandell Monday?
 19 A. No, I didn't.
 20 Q. Did you go to school with Zandell Tuesday?
 21 A. Yes, I did.
 22 Q. What did you do on Monday?
 23 A. Monday, I was over at my mother's house in Lenevar,
 24 and I couldn't go to school because the school bus don't
 25 run over there.

1 Q. So did you hang out on Monday?
 2 A. I stayed home.
 3 Q. You didn't go to the playground?
 4 A. No, I did not.
 5 Q. You didn't see Zandell Monday?
 6 A. No.
 7 Q. Never?
 8 A. Never.
 9 Q. Tuesday you did?
 10 A. Yes.
 11 Q. At school?
 12 A. Yes.
 13 Q. And you talked about this?
 14 A. We didn't talk about it at school.
 15 Q. Never?
 16 A. Not at school.
 17 Q. Were you contacted by anybody at school ---
 18 A. No, I wasn't.
 19 Q. --- concerning this?
 20 A. No.
 21 Q. Never?
 22 A. (Shaking head negatively).
 23 Q. What about on the bus? Do you ride the same bus?
 24 A. Yes, we do.
 25 Q. Did Mr. Hayes say anything to you about this on the

1 bus?

2 A. All he said was that we have to talk, that's all.

3 Q. He didn't say anything to you about stabbing this

4 man?

5 A. No, he didn't.

6 Q. Are you and Zandell in the same classes?

7 A. No, we are not.

8 Q. Do they have special education at Saint Andrews High

9 School?

10 A. Yes, they do.

11 Q. Are those the classes that Zandell's in?

12 A. I don't know.

13 Q. You don't know?

14 A. (Shaking head negatively).

15 Q. Do you know if he was in special education before

16 Saint Andrews High School?

17 A. Well back in middle school we were in the same

18 class, so I couldn't tell you.

19 Q. Are you afraid of Mr. Hayes?

20 A. No, I am not.

21 Q. Has he ever beaten you up?

22 A. No, he haven't.

23 Q. Zandell is kind of a wild and crazy guy sometimes,

24 isn't he?

25 A. Well he likes to crack jokes a lot.

1 Q. No, I mean physically. He likes to mix it up too,

2 don't he?

3 A. I've never seen him fight.

4 Q. You've never seen him fight?

5 A. No, I haven't.

6 Q. You have never seen him offer to fight?

7 A. No, I haven't.

8 Q. You have never seen him threaten?

9 A. Yes.

10 Q. He just threatens? He don't ever get into it? Is

11 that it?

12 A. I don't know.

13 Q. Well now, the fact is he went to Leon McNeal's house

14 that night after y'all left the bike path with a knife

15 and said he wanted to cut somebody, isn't that right?

16 A. He said he wanted to fight McNeal.

17 Q. And he had the knife?

18 A. At that time.

19 Q. Why did you all run away when McNeal ran into the

20 house?

21 A. Because we thought he would get his gun.

22 Q. So the four of you get to Rose Campbell's apartment.

23 And there you find her, and she's standing around in the

24 parking lot talking to two or three other men; is that

25 correct? Young fellows?

1 A. When we left McNeal's house we didn't run back to
 2 her house.
 3 Q. No, no, before McNeal. I want to go back to your
 4 story here. The four of you had gotten away from the
 5 path, and you are at Rose Campbell's, right?
 6 A. Yes.
 7 Q. Now Mr. Hayes is worried that his ankle or leg has
 8 been cut, isn't that right?
 9 A. Yes, he was.
 10 Q. In fact, he is looking at it, he is inspecting it,
 11 isn't that right?
 12 A. Yes.
 13 Q. And he discovers blood on his sock, isn't that
 14 right?
 15 A. Yes.
 16 Q. And he takes his socks off and burns them?
 17 A. Yes.
 18 Q. Did you think that odd?
 19 A. It was just -- he said he didn't want to take the
 20 bloody sock home.
 21 Q. Now was that before or after he went back to Richard
 22 Haynes and was there alone?
 23 A. That was before.
 24 Q. You personally never returned to the body, but
 25 Zandell Hayes did, right?

1 A. Yes, he did.
 2 Q. And Zandell had the knife in his pocket right after
 3 that at Leon McNeal's house, right?
 4 A. Yes, he did because Demetrius had ---
 5 Q. And while it was in his pocket, you didn't know
 6 where it was, did you?
 7 A. I seen Demetrius give him the knife on the way to
 8 Fee McNeal's house.
 9 Q. When did you remember that?
 10 A. When we were walking through the little road that
 11 leads right into Rice Drive.
 12 Q. When did you first remember that?
 13 A. I don't understand you.
 14 Q. Today?
 15 A. No.
 16 Q. Isn't it a fact that it's in neither one of these
 17 statements that you have made in writing to the
 18 Charleston City Police?
 19 A. It is.
 20 Q. It is?
 21 A. It should be in the second one.
 22 Q. You think that you got it completely straight in the
 23 second story?
 24 A. Yes, I do.
 25 MR. KENT: Do we have the original of that

1 statement in the courtroom, the second statement?

2 MR. CONDON: Are you asking me a question?

3 MR. KENT: Yes. Your Honor, I would ask that
4 it be shown to this witness so he can inspect it. I
5 would like him to point that out for me.

6 MR. CONDON: Your Honor, I have no objection to
7 both these statements being offered into evidence.

8 MR. KENT: I have got a xerox copy here, if I
9 would be permitted to show that to this witness,
10 Your Honor.

11 THE COURT: Do you want to mark it for
12 identification?

13 MR. KENT: I am not concerned about introducing
14 it into evidence. I just want to get straight with
15 these stories, Your Honor.

16 THE COURT: Well, let's mark it for
17 identification if he is going to identify it.

18 MR. KENT: Pam, would you mark this for
19 identification purposes? Could we use the original
20 instead, Your Honor?

21 MR. CONDON: It may take some time for us to
22 find it.

23 THE COURT: You have got a pretty clean copy?

24 MR. KENT: This one -- Your Honor, this one is
25 clear, yes.

1 THE COURT: Mr. Solicitor?

2 MR. CONDON: Your Honor, I believe this copy is
3 pretty clean.

4 MR. KENT: I hate to give up the only copy I've
5 got.

6 THE COURT: You can use this.

7 (Thereupon, the document was marked Defendant's
8 Exhibit 1 for identification purposes only.)

9 MR. KENT: Would you please ---

10 THE COURT: Do you want him to identify it?

11 MR. KENT: Sir?

12 THE COURT: Do you want him to identify it?

13 MR. KENT: Yes, please.

14 BY MR. KENT:

15 Q. Esdavan, do you recognize the copy that has been
16 given you as being the statement made and signed by you
17 on March 5th, 1987?

18 A. Yes.

19 Q. Just to -- let me see if I can help you here, go
20 through it briefly. Right in the beginning you say: In
21 reference to the statement I gave to the City Police on
22 September 16th concerning the murder on the Ardmore bike
23 path, there are additional facts I would like to
24 incorporate into this statement. These changes are --
25 and then you go on to tell them. Now would you take a

1 look at that and show me where Demetrius is giving
 2 Zandell the knife back?
 3 A. Okay. (Witness reading) I don't see it.
 4 Q. It's not there, is it?
 5 A. No, it isn't.
 6 Q. Well in your first statement, the one back in
 7 September, you told the police that Dee Brown had the
 8 knife at the apartments, isn't that right?
 9 A. That's right.
 10 Q. Now have you decided that that is just completely
 11 wrong?
 12 A. Yes, I have.
 13 Q. Zandell definitely did have the knife on the way to
 14 McNeal's right after he had come from the bike path and
 15 had been there alone for some time, isn't that correct?
 16 A. Well from the bike path, when Demetrius came back,
 17 he had the knife; and he told us that he had stabbed the
 18 man. He showed the knife to us.
 19 Q. Mr. Hayes?
 20 A. No, Demetrius.
 21 Q. You did not see the knife?
 22 A. He shown it to us when he said that.
 23 Q. Isn't it a fact that when you all went over to
 24 McNeal's you knew that Zandell Hayes intended to fight
 25 that man?

1 A. Yes, I did.
 2 Q. And indeed you knew that Dee Brown -- they had made
 3 it up for Dee Brown to go knock on the man's door and ask
 4 him out for a beer, isn't that right?
 5 A. I don't know what he asked him for, but he went to
 6 the door.
 7 Q. He drew him out of the house?
 8 A. Yes.
 9 Q. And you and Zandell and Demetrius were out of sight,
 10 isn't that right?
 11 A. We were in the street.
 12 Q. And McNeal comes on out there?
 13 A. Yes.
 14 Q. And then there is the four of you and him?
 15 A. Yes.
 16 Q. Does Zan pull the knife out in front of Leon McNeal?
 17 A. No. They were talking, and he had the knife closed
 18 in his hand.
 19 Q. He already had it out?
 20 A. Yes.
 21 Q. Now McNeal runs away, and you all are afraid that he
 22 is going to get his gun?
 23 A. Yes.
 24 Q. And so you scatter?
 25 A. We run, yes.

1 Q. There is a lot of excitement?
 2 A. Yes.
 3 Q. Isn't that right?
 4 A. Yes.
 5 Q. And everybody runs away?
 6 A. Yes.
 7 Q. And I believe you said that everybody collected back
 8 up at the Starcastle Apartments parking lot for just a
 9 minute?
 10 A. A brief moment.
 11 Q. Was that the parking lot at the end of the buildings
 12 down towards the woods there?
 13 A. No, it wasn't.
 14 Q. It was up towards Rose's?
 15 A. Yes, it was.
 16 Q. And Mr. Hayes was the last one to get there?
 17 A. No, he wasn't. All of us was together.
 18 Q. You were all together?
 19 A. Yes.
 20 Q. Isn't it a fact that Zan was a little bit longer
 21 getting there than the rest of you?
 22 A. I believe he was a little bit before the rest of us.
 23 Q. He got there a little before you? Did you go
 24 straight there, or did you go up the street towards
 25 Highway 61, up Rice towards 61, before you went over to

1 the Starcastle lot?
 2 A. We ran straight there.
 3 Q. You ran straight there?
 4 A. (Nodding affirmatively)
 5 Q. You think Zandell was first?
 6 A. Uh huh.
 7 Q. Have you seen the knife since then?
 8 A. No, I haven't.
 9 Q. Was the last time you saw it with Mr. Hayes there
 10 outside of Leon McNeal's house?
 11 A. Yes, it was.
 12 Q. Has Mr. Hayes never told you what he did with the
 13 knife?
 14 A. No.
 15 Q. You never wanted to ask him?
 16 A. No.
 17 Q. You could have asked him at school.
 18 A. Yeah, I could have.
 19 Q. On the bus.
 20 A. (No response).
 21 Q. Isn't that right?
 22 A. Yes, I could have.
 23 Q. And you knew by Tuesday that Richard Haynes or some
 24 man had been killed on that bike path, did you not?
 25 A. Yes.

1 Q. Now how did you get to the police station in
 2 September? Did they come pick you up?
 3 A. Yes.
 4 Q. Did you want to go? Were you afraid?
 5 A. Yes, I was.
 6 Q. You were very reluctant, weren't you?
 7 A. I don't understand you.
 8 Q. You were scared?
 9 A. Yes.
 10 Q. Of the police, investigation of a murder. It was
 11 frightening, wasn't it?
 12 A. Yes, it was.
 13 Q. But you said in your statement of September 16th
 14 that you went there of your own free will?
 15 A. Yes, we did.
 16 Q. And, of course, you volunteered to tell everything
 17 you told in September also, is that correct?
 18 A. Yes.
 19 Q. Well the police told you, didn't they, that it would
 20 be better if you told the truth and that you would not be
 21 punished so severely if you told the truth than if you
 22 lied, isn't that right?
 23 A. I went down there with the intentions of telling the
 24 truth.
 25 Q. Isn't it a fact that the police told you at some

1 point before you started making all these statements that
 2 you would not be punished so badly if you told the truth?
 3 A. Yes, it was.
 4 Q. But in March of this year you decided that the truth
 5 was considerably different from what it was in September,
 6 isn't that correct?
 7 MR. CONDON: Your Honor, that would be a
 8 conclusion. I wouldn't have any objection to both
 9 statements being put into evidence and comparing
 10 them. But considerably different is a conclusion.
 11 He's not qualified ---
 12 THE COURT: He is on cross-examination. I
 13 don't --
 14 MR. CONDON: Well, if I can go into it fully
 15 then.
 16 THE COURT: Just a second. Let's see if we ---
 17 MR. CONDON: If he wants to go into that ---
 18 THE COURT: Let's talk about it.
 19 (Thereupon, counsel approached the bench, and a
 20 bench conference was held.)
 21 THE COURT: Overruled.
 22 BY MR. KENT:
 23 Q. in all this beating around that took place before
 24 you -- with all this tussling around, this man was not
 25 stabbed, isn't that right?

1 A. No, he wasn't.

2 Q. And when you left the bike path with him on it for

3 the first and only time, he was -- Richard Haynes was

4 some thirty or so feet out towards Ardmore from the

5 bench, isn't that correct?

6 A. About ten yards, yes.

7 Q. And it was only in March that you remembered that

8 Demetrius Gathers hit this man over the head with the

9 umbrella handle, is that correct?

10 A. I've had time since I have been in County Jail to

11 remember lots of things.

12 Q. Since you have been in County Jail you have had an

13 opportunity to talk to the prosecutor several times

14 before your March, 1987, statement also; isn't that

15 right?

16 A. Yes, it is.

17 Q. The fact is that when you talked to the prosecutors

18 you would be brought down here to the courthouse, isn't

19 that right?

20 A. Yes.

21 Q. How many times would you say you made that trip,

22 sir?

23 A. About five times.

24 Q. About five times. You enjoyed getting out of the

25 jail?

1 A. Yes.

2 Q. Not much air, and it's kind of uncomfortable in the

3 jail, isn't it, sir?

4 A. Yes, it is.

5 Q. You forgot to mention in September that you also

6 went through that man's belongings, isn't that right?

7 A. Yes, it is.

8 Q. Were you afraid to tell the truth about that?

9 A. No, I am not.

10 Q. You know it was a crime?

11 A. Yes, I do.

12 Q. You knew it was a crime in September?

13 A. Yes, I do.

14 Q. But in March of 1987 you had already made your deal

15 with the State of South Carolina, is that correct?

16 A. I didn't make a deal. I just pled guilty to what I

17 did.

18 Q. Pardon me. I was only using the language of the

19 State. You pled guilty and had certain assurances, isn't

20 that correct?

21 A. I had no assurances.

22 Q. You have had the assurance that you won't be sitting

23 in the electric chair or even put in danger of that,

24 isn't that true, sir?

25 A. I don't feel that I can get put in that as long as I

1 tell the truth.

2 Q. Well we know you can't now, Esdavan. We know you
3 can't now. When did you go to court and plead guilty to
4 this misprision of a felony? Do you remember?

5 A. I can't remember the date.

6 Q. Does December 17, 1986, sound familiar to you, right
7 before Christmas?

8 A. Yes.

9 Q. You talked to your lawyer after that?

10 A. Yes, I did.

11 Q. Right?

12 A. Yes.

13 Q. Your understanding is that you cannot be further
14 prosecuted in connection with Richard Haynes' death so
15 long as you tell the truth, correct?

16 A. Yes.

17 Q. Can you tell me what the State knows from any
18 eyewitness other than what you tell them?

19 A. I don't understand your question.

20 Q. The State don't know anything other than what you
21 tell them as an eyewitness, isn't that right?

22 MR. CONDON: Your Honor, I object to that.

23 THE COURT: That is argumentative. Ask him the
24 question, he can answer it.

25 BY MR. KENT:

1 Q. Now in September you told the police that Dee Brown
2 and Ian Hayes were standing over this man when he,
3 Demetrius, jabbed him in the behind with the umbrella;
4 isn't that right?

5 A. Yes, I did.

6 Q. That would have required you to see those two men
7 there, right?

8 A. Yes, it would have.

9 Q. That would have required you to call up in your
10 mind's eye a recollection of those two people standing
11 over Demetrius Gathers -- over Richard Haynes, alongside
12 of Demetrius Gathers when he jabbed him with the
13 umbrella; isn't that correct?

14 A. Yes, it was -- yes, it is.

15 Q. But in March of this year you say that is not so?

16 A. No because, as I said before, when I made that
17 statement ---

18 Q. I know, you are less confused now than you were
19 then.

20 A. Yes, I am.

21 Q. In September you said that Dee Brown had the knife
22 in his pocket there at the apartments, isn't that
23 correct?

24 A. Yes, it is.

25 Q. Not so in March, isn't that right?

1 A. No, it isn't.

2 Q. But you are sure that Ian Haynes returned to Richard

3 Haynes on this bike path and was there alone for some,

4 however brief, period of time; isn't that right?

5 A. Yes.

6 Q. You left that out of the September statement, isn't

7 that right?

8 A. Yes, I did.

9 Q. Were you aware that Zandell had been brought to the

10 police station to make a statement about the same time

11 you were?

12 A. Yes.

13 Q. And you left it out in your September statement that

14 Zandell was there with Richard Haynes on the bike path

15 for some brief period of time, isn't that correct?

16 A. Yes, it is.

17 Q. Do you know what the punishment for misprision of a

18 felony is, sir? What's the maximum applicable

19 punishment?

20 A. I think ten years, sir.

21 Q. And, of course, you know what the maximum possible

22 punishment is for aggravated murder?

23 A. Yes, I do.

24 Q. What is it?

25 A. The electric chair.

1 Q. Now in June of last year, before any of this

2 happened, you had been charged -- I believe you described

3 it to some extent to the jury already -- with a first

4 degree burglary, isn't that right?

5 A. Second.

6 Q. That is what you pled guilty to.

7 MR. CONDON: He was charged with second.

8 BY MR. KENT:

9 Q. You were charged with second degree all along?

10 A. Yes.

11 Q. Do you know what the maximum punishment for that is?

12 A. Fifteen.

13 Q. You haven't been sentenced yet?

14 A. No, I haven't.

15 Q. Pardon me?

16 A. No, I haven't.

17 Q. Isn't it a fact, Esdavan, that you have been assured

18 also of the State's recommendation that you will be

19 sentenced pursuant to the Youthful Offender Act?

20 A. Hoping that that's what I will get.

21 Q. Y.O.A., Youthful Offender Act. You have heard that

22 before?

23 A. Uh huh.

24 Q. Do you know what is the maximum punishment there?

25 A. Six years.

1 Q. Isn't it a fact, sir, that you have been assured
2 that with the time you have served in jail already that
3 you will not see the end of summer, 1987, in jail?

4 A. I don't know that.

5 Q. You believe it, don't you?

6 A. I can't say.

7 Q. You are hoping, aren't you?

8 A. I'm hoping.

9 Q. Be back in school next September?

10 A. Yes, I will.

11 Q. Thank you, Esdavan.

12 REDIRECT EXAMINATION

13 BY MR. CONDON:

14 Q. Steven, we have got a written agreement, don't we?

15 A. Yes, we do.

16 Q. And the only way you will be prosecuted for anything
17 more than what you have pled guilty to is what? How can
18 that happen?

19 A. If I don't tell the truth.

20 Q. And that's what we've told you, to tell the truth.

21 A. Yes.

22 Q. If you don't, you will be prosecuted for perjury
23 too?

24 A. Yes.

25 Q. Now you have given, in effect, two statements?

1 A. Yes.

2 Q. In both of those statements you have always said
3 Demetrius Gathers used the umbrella?

4 A. Yes.

5 Q. And you talk about being confused when you go to the
6 police department the first time?

7 A. Yes.

8 Q. Well, you were watching out for yourself the first
9 time?

10 A. Yes.

11 Q. You didn't tell us about going through the
12 belongings?

13 A. Yes.

14 Q. And how did the police get up with you?

15 A. Well me and Zandell turned ourselves in. We called
16 them and told them to meet us out on Forest Park.

17 Q. You called the police?

18 A. Yes.

19 Q. And we have had several conferences? We have talked
20 about your testimony?

21 A. Yes.

22 Q. And you have also talked to Mr. Kent, haven't you?

23 A. Yes, I have.

24 Q. You voluntarily talked to him about your testimony?

25 A. Yes, I have.

1 Q. And did he ask you about whether or not you would
2 testify that the knife was given from Demetrius Gathers
3 to Zandell Hayes?

4 A. I don't understand.

5 Q. Well he asked you -- he questioned you that you
6 might have made this up the first time today?

7 A. Yes.

8 Q. About Demetrius giving the knife to Zandell before
9 he went to Fee McNeal's house?

10 A. Yes.

11 Q. Did he ask you about that?

12 A. Yes, he did.

13 Q. What did you tell him?

14 A. Tell him that Demetrius had already -- had given Zan
15 the knife on the way to McNeal's house.

16 Q. You told him that when you met with him?

17 A. Yes, I did.

18 Q. That was several days ago?

19 A. Yes.

20 Q. Thank you.

21 MR. KENT: Your Honor, just a few more
22 questions along the lines of the ---

23 RE CROSS EXAMINATION

24 BY MR. KENT:

25 Q. Esdavan, neither one of these statements you made to

1 the police have anything in it about Zan stealing the
2 tool box that this knife came from out of a truck, right?

3 A. No.

4 Q. I want you to think carefully before you answer
5 this. When was the first time -- when was the first time
6 anybody from the prosecutor's office asked you about
7 that, the knife coming from a tool box taken from a truck
8 that night?

9 A. They didn't ask me about it.

10 Q. When was the first time you told them about it?

11 A. Today.

12 THE COURT: What was your answer?

13 THE WITNESS: Today.

14 BY MR. KENT:

15 Q. Before you got on the witness stand?

16 A. Yes.

17 Q. Do you remember who it was you were talking to?

18 A. Yes.

19 Q. Who?

20 A. I don't know her name.

21 Q. This lady right here, Miss Fisher?

22 A. Yes.

23 Q. Works for Mr. Condon? Why did you tell her about
24 it? Did she say something about Mr. Barfield and his
25 tool box and knife?

1 A. She didn't call no name.
 2 Q. Uh huh.
 3 A. She just asked me about it.
 4 Q. What was the sense of the question?
 5 A. She asked me if we had got the knife out of a tool
 6 box.
 7 Q. Uh huh. And that is the first time you ever told
 8 them about that, isn't that right?
 9 A. Yes.
 10 Q. Well, Esdavan, is there anything else about this
 11 case that the State don't know to ask you that you have
 12 left out?
 13 A. No.
 14 Q. Isn't it a fact that you didn't tell them about the
 15 origin of this knife being a theft out of a car until
 16 they knew to say something about it to you?
 17 A. I always told them that we found it.
 18 Q. Now, Esdavan, I know you want to tell us all the
 19 truth, but I want you to search your mind before I sit
 20 down, and I want you to assure me that you haven't left
 21 out any of the truth in this case. Because we know now
 22 ---
 23 THE COURT: Don't make a speech, Mr. Kent.
 24 Just ask him a question.
 25 BY MR. KENT:

1 Q. You can see how concerned I am, Esdavan, that you
 2 don't leave anything out until its known by the
 3 prosecutor?
 4 A. Yes.
 5 Q. Anything else?
 6 A. No, it isn't.
 7 Q. You are sure you never heard Zandell say something
 8 along the lines of, "Well, I am going to cut somebody's
 9 behind tonight."
 10 A. He say he wanted to fight Fee McNeal.
 11 Q. I am talking about after he had been frustrated in
 12 cutting Mr. McNeal. You don't know that he ever said
 13 something like that?
 14 A. After?
 15 Q. When he saw he wasn't going to get at Leon McNeal
 16 with the knife.
 17 A. We just was planning on going home.
 18 Q. No further questions.
 19 REDIRECT EXAMINATION
 20 Q. Steven, when you met with Mr. Kent voluntarily did
 21 he ask you where you got the knife from?
 22 A. No, he didn't.
 23 Q. Thank you. Nothing further.
 24 THE COURT: All right, son, you can come down.
 25 MR. CONDON: Your Honor, we call Mr. Carter.

1 THE COURT: Mr. Carter.
2 JAMES L. CARTER, JR., being
3 first duly sworn, testified as follows:
4 THE COURT: Mr. Carter, do you have some gum?
5 THE WITNESS: Yes.
6 THE COURT: Take it out, please.
7 DIRECT EXAMINATION
8 BY MR. CONDON:
9 Q. Mr. Carter, they call you Jeff, don't they?
10 A. Yes.
11 Q. James Jeff Carter?
12 A. Well, that is just a nickname.
13 Q. Your nickname's Jeff?
14 A. Right.
15 Q. How old are you?
16 A. Seventeen.
17 Q. Where do you live?
18 A. 1 Rice Drive, Starcastle Apartments.
19 Q. At Starcastle Apartments. And do you go to school?
20 A. Yes, I go to Saint Andrews High School.
21 Q. Saint Andrews High School. What grade are you in?
22 A. Eleventh.
23 Q. All right. Do you know Demetrius Gathers?
24 A. Yes.
25 Q. How do you know him?

1 A. You could say friend, friend-wise, associate, you
2 know. I have seen him around.
3 Q. Seen him around Starcastle?
4 A. Yeah.
5 Q. How about Dyonsoria Brown, also known as Dee Brown?
6 A. Yeah, I know him pretty well too.
7 Q. How do you know him?
8 A. As a friend.
9 THE COURT: Mr. Carter, speak into the mike,
10 sir.
11 THE WITNESS: Okay.
12 BY MR. CONDON:
13 Q. He is a friend of yours?
14 A. Yeah.
15 Q. And Zandell Hayes? Do you know Zandell?
16 A. Yes, I know him as a friend, too.
17 Q. How about Steven Hardrick, also known as Nice?
18 A. He is a friend of mine, also.
19 Q. So you know everybody?
20 A. Yeah. Yes, sir.
21 Q. And you live in Starcastle? Who do you live with?
22 A. I live with my mother and my stepfather and my two
23 brothers.
24 Q. And did you know Ricky Haynes?
25 A. No.

1 Q. Didn't know him? Now I want to talk about September
2 13th of last year, which was a Saturday, at nighttime.

3 A. Okay.

4 Q. Were you at the Starcastle Apartments?

5 A. Yes.

6 Q. What were you doing there?

7 A. Well I left my apartment, and I went down to
8 Apartment B-6 to Hodges Campbell's apartment to see if he
9 was home. He was home, but he wasn't coming outside. He
10 had looked out the window and said he wasn't coming
11 outside. So his sister came out, and we started talking.

12 Q. Who is his sister?

13 A. Rose Campbell.

14 Q. Okay. What happened?

15 A. And then after a while Jerome Hampton, I believe,
16 and Todd came, drove up. They didn't come up together,
17 but, you know, they came one by one. And we was out
18 there talking. And I heard some music coming from
19 towards the bike path, and I looked in the woods,
20 Demetrius, Zandell, Dee Brown and Steven coming down.

21 Demetrius and Zandell didn't have on no shirts.
22 When they came up to us, Dee Brown knocked on the door
23 for Hodges. Hodges looked out the window and said he
24 wasn't coming out. I noticed that all of them had blood
25 on their shoes except Steven, and Dee Brown had blood on

1 his shirt.

2 Dee Brown was talking about he was strictly
3 business, he wasn't taking no more mess from anybody.

4 And so, you know, they started telling us about they
5 messing up someone on the track, the bike path which we
6 call the track. And they started telling us, they said
7 something about they was beating him up or something.

8 Then after while Zandell noticed some blood on
9 his ankle, on his sock; and he started saying he was
10 feeling weak. You know, he -- after, you know, talking
11 about he feeling weak, he thought the man had cut him or
12 something on the ankle, he had said: Come on, MiMi,
13 let's go, you know, mess that -- kill him or something
14 like that. So they went back out ---

15 THE COURT: Do what now? Repeat that?

16 THE WITNESS: Zandell had said, "Come on, MiMi,
17 let's go kill him." It wasn't in that, you know,
18 exact word frame; but it was something like that.

19 BY MR. CONDON:

20 Q. Who is MiMi?

21 A. Demetrius. And so they went back out there, and
22 they came back. Zandell had said something like, "Call
23 the EMS," and Demetrius had said he's dead, right? But I
24 didn't take him seriously. I thought, you know, they was
25 fighting someone else, but I didn't never figure it was

1 that man.
 2 So, you know, they started talking and
 3 everything. We was talking. And Zandell started saying
 4 something about him wanting to mess up McNeal, Leon
 5 McNeal, for something McNeal had did to his brother. So
 6 then they walked around to the apartments -- to his
 7 house, to McNeal's house. And a little while after that
 8 they came running back, and I had stopped Steven, and I
 9 had asked him what had happened. He said they went up
 10 there ---
 11 Q. All right, don't tell me what Steven said.
 12 A. Okay.
 13 Q. Anything said about an umbrella?
 14 A. Well, if I recall, Demetrius had said that he had
 15 stuck it up the man's behind.
 16 Q. Who said that?
 17 A. Demetrius.
 18 Q. What did he say exactly?
 19 A. He had said he had stuck it up the -- he stuck the
 20 umbrella up his behind. And Jan had gathered us around,
 21 and he had told us that if anyone asks us anything about
 22 this, what they had told us, that we didn't know anything
 23 about it. And he had burned his socks after him and
 24 Demetrius came back from the track the second time
 25 because he said he didn't have no more use for it.

1 Q. So Zandell burned his socks?
 2 A. Yes.
 3 Q. Did he have blood on the socks?
 4 A. Yes.
 5 Q. You said some of them didn't have their shirts on?
 6 A. Zandell and Demetrius.
 7 Q. Did they have undershirts on?
 8 A. No.
 9 Q. Where was the blood on everyone's clothing?
 10 A. Well three of them, they had blood on their
 11 sneakers; and on Dee Brown, he had blood on his shirt,
 12 which was a light-colored shirt.
 13 Q. And about what time of night was this?
 14 A. This was around 10:30 or quarter to 11:00, to my
 15 knowledge.
 16 Q. Were you drinking anything that night?
 17 A. No, sir.
 18 Q. Using any drugs?
 19 A. No, sir.
 20 Q. Now you have just come forward with this information
 21 fairly recently, haven't you?
 22 A. Yes.
 23 Q. How long ago?
 24 A. Probably about two weeks ago.
 25 Q. Why the delay?

1 A. Well, really I didn't want to have anything to do
 2 with this; but, you know, I knew eventually that y'all
 3 would come up to me because Rose had told me that she had
 4 got a subpoena and that I would be getting one soon about
 5 three weeks ago when she first got hers. So, you know, I
 6 was kind of prepared for it when y'all came up.

7 Q. And again, you know Zandell Bayes?

8 A. Yes.

9 Q. You are friends with him?

10 A. Yes.

11 Q. You know Steven Hardrick?

12 A. Yes.

13 Q. Are you friends with him?

14 A. Yes.

15 Q. You know Dyonzoria Brown?

16 A. Yes.

17 Q. You are friends with him?

18 A. Yes.

19 Q. And you know Demetrius Gathers?

20 A. Yes.

21 Q. You are friends with him?

22 A. In a sense.

23 Q. You have nothing against him, do you?

24 A. Not really, no.

25 Q. But you have had some run-ins, haven't you?

1 A. Yes.

2 Q. What kind of run-ins?

3 A. Well at one time somehow he came across some
 4 information that my brother, my older brother, and I and
 5 two other fellows had wanted to gang him, jump him for
 6 some odd reason.

7 Q. So you have got some ill feelings towards him?

8 A. Well that is, you know, all in the past, forgive and
 9 forget. I sort of forgave, but never forgot.

10 Q. Now did you see, when they came off of the track --
 11 you call the bike path the track?

12 A. Yes.

13 Q. Did you see any alcoholic beverages?

14 A. See Brown had a bottle of Wild Irish Rose in his
 15 pants, and Steven had a couple of wine coolers in his
 16 hand, with a radio.

17 Q. A couple of wine coolers?

18 A. Yes.

19 Q. With a radio?

20 A. (Nodding affirmatively)

21 Q. Did you see an umbrella?

22 A. No, I do not recall seeing an umbrella.

23 Q. And how long a period of time were you in their
 24 company?

25 A. Thirty minutes, maybe more. Maybe less. I will say

1 about twenty-five to thirty minutes.
 2 Q. Then you say they went off to Fee McNeal's house?
 3 A. Yes.
 4 Q. How long before they came back from Fee McNeal's
 5 house?
 6 A. Around five to eight minutes they came running back
 7 through the apartments.
 8 Q. Five to eight minutes?
 9 A. Yeah.
 10 Q. And how far away does Fee McNeal live from where you
 11 were?
 12 A. From where I was?
 13 Q. Right.
 14 A. Couple of yards, maybe. I don't know the exact
 15 distance.
 16 Q. And you are certain that Zandell Hayes and Demetrius
 17 Gathers went back on that track?
 18 A. Yes.
 19 Q. Did you see a knife?
 20 A. Yes, I seen -- excuse me. I seen Dee Brown with the
 21 knife. But I don't know how it got in Zandell's hands.
 22 Dee Brown was the only one I seen pulled out the knife.
 23 Q. How do you know it got in Zandell's hands?
 24 A. Because Steven had told me.
 25 Q. All right. That is hearsay. You don't know that.

1 A. Well.
 2 Q. The only person you saw with a knife that night was
 3 ---
 4 A. Dee Brown.
 5 Q. --- Dee Brown?
 6 A. Yes, sir.
 7 Q. How big a knife was it?
 8 A. It was about -- it wasn't too big of a knife. It
 9 was a regular pocket-size knife.
 10 Q. Pocket-size?
 11 A. Yes.
 12 Q. Answer any questions the defendant has.
 13 CROSS-EXAMINATION
 14 BY MR. KENT:
 15 Q. Mr. Carter, how long were these four fellows at Rose
 16 Campbell's before they went to McNeal's?
 17 A. I will say they was around there for about twenty
 18 minutes.
 19 Q. They went to McNeal's, and then they came back; is
 20 that correct?
 21 A. Yes. But they didn't stay long.
 22 Q. Was there any other coming and going, Mr. Carter,
 23 that you recall by these fellows?
 24 A. Well the only ones was when Demetrius and Zandell
 25 went back on the bike path, and when they came running

1 back through the apartments.
 2 Q. Was that before or after they had gone over to
 3 McNeal's?
 4 A. When they went back on the bike path?
 5 Q. Yes, sir.
 6 A. It was after. After they went back on the bike path
 7 and came back, they was standing around for a little
 8 while, and then they went to McNeal's house.
 9 Q. Okay. Now I tried to take it down the way you said
 10 it, and it's not clear to me how sure you are. Neither
 11 is it from the statement you made to the police.
 12 MR. CONDON: Your Honor ---
 13 MR. KENT: I want to ask you ---
 14 MR. CONDON: --- he knows this is testifying.
 15 I wish he would just follow the rules of evidence.
 16 THE COURT: Yes, sir. Just ask him questions
 17 and ---
 18 MR. KENT: I am not testifying. I'm trying to
 19 ask this question, Your Honor.
 20 THE COURT: All right, just ask your question.
 21 BY MR. KENT:
 22 Q. I want you to tell me what you mean when you say:
 23 If I recall correctly, Demetrius said so and so. What do
 24 you mean by that? Do you mean you are having some
 25 trouble remembering for sure that Demetrius said it?

1 A. Yeah.
 2 Q. Isn't it a fact, Mr. Carter, that -- when these
 3 fellows first came up to you, you weren't paying any
 4 particular attention to what they were talking about;
 5 isn't that right?
 6 A. No, that is not. I was paying attention to them.
 7 When they first came up I was in front of Hodges and Rose
 8 Campbell's door, sitting down up against the brick wall.
 9 And then they started talking.
 10 Q. Well I thought you said that -- if I remember. I
 11 thought you said that you didn't believe them at first
 12 about beating somebody up on the bike path, is that
 13 right?
 14 A. I didn't believe them about -- I didn't believe -- I
 15 didn't really take them seriously about killing somebody
 16 on the bike path. I could imagine that they was fighting
 17 because they had blood on themselves.
 18 Q. Dee Brown was quite excited, isn't that right?
 19 A. Yes, he was.
 20 Q. He was doing a lot of talking, wasn't he?
 21 A. Yes, he was.
 22 Q. And a lot of strutting around?
 23 A. Yes.
 24 Q. Would you say that he was pretty cocky out there?
 25 He is not going to take any more -- what was the word? I

1 am strictly business now, strictly business? Is that
 2 what he said?
 3 A. Yes, he -- yes.
 4 Q. He was saying that over and over again?
 5 A. He said that about two or three times.
 6 Q. Did he say other things like that?
 7 A. I don't remember if he did.
 8 Q. Well in all of this talking between Dee Brown and
 9 Iandell Hayes, do you recollect Ian saying something
 10 about wanting to whip McNeal that night or cut him?
 11 A. He said he had wanted to mess McNeal up.
 12 Q. Mess him up?
 13 A. Yes.
 14 Q. There were a number of comments made during the
 15 course of this -- what did you say, fifteen or twenty
 16 minutes before they went to McNeal's?
 17 A. About twenty minutes or so.
 18 Q. Pardon me?
 19 A. About twenty minutes or so.
 20 Q. You can't be sure, Mr. Carter, can you, that
 21 Demetrius said that he, personally, Demetrius, had jabbed
 22 this man in the behind with the umbrella, can you?
 23 A. I am pretty sure about that. I am sure he said
 24 that.
 25 Q. Well when people are talking around out in the

1 parking lot like that -- you don't know Demetrius from
 2 school, do you?
 3 A. No, I don't.
 4 Q. Do you know that he was not going to school?
 5 A. I didn't really know what he was doing, you know, in
 6 his spare time.
 7 Q. Well are you positive in these comments that were
 8 being made by this group of people that Demetrius was
 9 referring to himself when he said -- when he was
 10 referring to him sticking -- jabbing this man with the
 11 umbrella?
 12 A. Yes.
 13 Q. You are sure he was referring to himself?
 14 A. Yes. He said "I". He started it off with "I".
 15 Q. Was this after Zan had returned from the path when
 16 they made the second trip back there?
 17 A. No. It was before.
 18 Q. Are you sure that Dee Brown had a bottle of Wild
 19 Irish?
 20 A. Yes.
 21 Q. What is that?
 22 A. Wine.
 23 Q. And Steven Bardrick had a couple of wine coolers?
 24 A. Yes. I would say about two or three.
 25 Q. Thank you.

5 MICHAEL GORDON, being first
6 duly sworn, testified as follows:
7 DIRECT EXAMINATION
8 BY MR. CONDON:
9 Q. Sergeant Gordon, what do you do, please, sir?
10 A. I work for the Charleston Police Department.
11 Q. What do you do for our police department?
12 A. I'm currently assigned to the central detective
13 division.
14 Q. How long have you been with the City of Charleston
15 Police Department?
16 A. Nine and a half years.
17 Q. Did you have occasion to come in contact with the
18 defendant, Demetrius Gathers, on Tuesday, September 16th?
19 A. Yes, I did.
20 Q. About what time did you see him?
21 A. I saw him probably a couple minutes before 6:30 in
22 the evening.
23 Q. Where did you see him?
24 A. At the City Police Department on Lockwood Boulevard.
25 Q. And would you just give us a general picture of how

800
- 1 he appeared to you when you first saw him?
2 A. Yes, sir. He appeared very -- very calm. He was
3 cooperative. Not disorderly at all. He was brought in
4 to the central detective office and then into Lieutenant
5 Roberts' office, where I had my initial contact with him.
6 Q. When you saw him he was under arrest for the murder
7 of Richard Haynes and the criminal sexual assault of
8 Richard Haynes?
9 A. Yes, sir.
10 Q. Did you have occasion at that time to advise him of
11 any rights that he may have?
12 A. Yes, I did.

17 Q. Go ahead and read the whole thing.
18 A. Okay. "This statement of, Name, Demetrius Gathers,
19 is taken before Sergeant Michael Gordon of the Charleston
20 City Police Department, 9-16-86. This statement was
21 begun at 6:40 p.m.

22 "I, Demetrius Gathers, whose address is 20 Endo
23 Drive, am nineteen years of age and have completed the
24 eleventh grade in school. Sergeant M. Gordon, who has
25 advised me that he is a member of the Charleston City

1 Police Department and also advised me..." -- then there
2 are the Miranda. Would you like me to go through those
3 again?

4 Q. Go ahead and skip those. You have already published
5 those.

6 A. Okay. The narrative begins, "On Saturday, 9-13-86,
7 about 7:30 p.m., I met up with Zandell Hayes on the
8 bicycle track by Forest Park. We then walked back toward
9 Ardmore on the track and we met up with Nice, who is
10 Steven Hardrick. This was up near Starcastle Apartments.
11 From there we three walked back toward Maryville, and
12 from there we went to Orleans Gardens. My cousin Dana
13 drove us.

14 "We stayed at Orleans Gardens until about 9:20
15 p.m., and then we went to the pool hall on Wappoo Road.
16 This was me, Zandell, Dana and Steven. Dana dropped us
17 three, Zandell, Steven and myself, off at the pool hall
18 and left. We stayed at the pool hall about twenty-five
19 minutes. Then we left and went to Maryann's house. She
20 lives on Sequoia Drive. We stayed at Maryann's about ten
21 minutes, then we left and started walking on the bike
22 path again.

23 "When we got back near Starcastle Apartments,
24 we met up with Dee Brown on the path. From there the
25 four of us, Dee Brown, Zandell Hayes, Steven Hardrick and

1 myself, walked to the Majik Market next to Saint Andrews
2 Gardens and bought four Lowenbrau beers. Dee Brown
3 purchased them. From here we walked back on the path and
4 walked to the Beer Barn on Savannah Highway and bought a
5 twelve-pack of Schaefer beer. We then walked back to
6 Evergreen Street and stopped and talked to a man named
7 Reuben.

8 "We then went from there back onto the path and
9 walked back to the bench near Starcastle Apartments. At
10 this time a black male was changing clothes on the bench.
11 The black male and Zandell started talking, and Zandell
12 then hit him in the face. At this time Dee Brown started
13 hitting him too. Then I started to hit him also.

14 "At this time Zandell started choking the black
15 male, and I hit the black male two times in the chest,
16 and he broke away. Dee Brown then grabbed the black male
17 and started choking him. At this time Steven walked over
18 and said, "Let him go." Steven then walked down the
19 pathway toward Starcastle Apartments. I then left also
20 and walked into Starcastle Apartments. Zandell and Dee
21 Brown were still back on the path. About three minutes
22 later they came out.

23 "About ten minutes later we walked back to the
24 path. It was me, Zandell, Dee Brown. Steven stayed at
25 the apartments. When we got back to the path the black

1 male was lying on the ground about fifteen feet away from
2 the bench. He was making funny noises. I told Zandell
3 we should call EMS, but he said no. I then poured some
4 beer in the black male's face to try and wake him up.
5 Dondrell then started beating him in the head with the
6 umbrella, and Zandell stopped him.

7 "At this time me and Zandell picked up the
8 black male and laid him on the bench, and the three of us
9 walked back to the apartments. Then Dondrell, Dee Brown,
10 went back to see whether the man was still alive and
11 found out he was. At this time, Dee Brown and I went to
12 20th Century Fox Club and later returned to Starcastle
13 Apartments, where my mother came and picked me up."

14 That was the end of the narrative. And I then
15 asked a series of questions to him, the first being,
16 "Who stabbed the black male on the pathway?" His
17 response was, "Nobody."

18 The second question, "Who sexually assaulted
19 the black male with the umbrella?" His answer, "I guess
20 Dee Brown did it when he went back out there alone. The
21 umbrella belonged to him. It was brown and beige."

22 Third question, "Did anyone of you four have a
23 knife that night?" "Not that I recall. Oh, yeah,
24 Dondrell had a knife, but I didn't see him stab anyone."

25 "Did Steven ever hit or kick or injure this

1 black male?" His response was, "No."
2 "Did either of you four take any property from
3 this black male?" His response was, "No."
4 "Who ransacked the man's property and threw it
5 around?" His response was, "It happened in the scuffle."
6 Last question, "Is there anything else you wish
7 to tell?" His response was, "No, that's it."
8 Q. All right, Sergeant. Zandell Hayes, he is now
9 charged with murder and criminal sexual conduct?
10 A. Yes, sir.
11 Q. He is awaiting trial?
12 A. Yes, sir.

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THE COURT: Mr. Solicitor.

MR. CONDON: Thank you, Your Honor. Madame
Forelady, ladies and gentlemen of the jury, I want
to first thank you for your service in this case.
I know it has been a real inconvenience on you. On
behalf of the Haynes Family, on behalf of the people
who have been here, I'm sure on behalf of the
defendant himself, we thank you for your close
attention.

At this stage of the proceeding your duty at

1 this point becomes to decide the appropriate
 2 punishment for the murder of Richard Allen Haynes.
 3 And His Honor will instruct you on the applicable
 4 law in South Carolina, and I want to briefly go
 5 through that with you, if I might.

6 You are to weigh, in coming to your decision,
 7 the mitigating circumstances -- that is the
 8 circumstances that lessen the severity of this
 9 murder -- as well as the aggravating circumstances
 10 -- that is those circumstances that make it worse.
 11 Before a death sentence can be imposed in this state
 12 the jury must find beyond a reasonable doubt the
 13 existence of an aggravating circumstance. In this
 14 case we rely on the aggravating circumstance of
 15 criminal sexual conduct in the first degree. You
 16 have found him guilty of that beyond a reasonable
 17 doubt, and that has in effect been decided although
 18 you have to make a further finding at this point,
 19 and we rely on that circumstance.

20 Once that circumstance is found the mitigating
 21 circumstances have to be considered. If you do find
 22 mitigating circumstances -- and that is
 23 circumstances that will lessen the severity of this
 24 murder -- the death penalty can still be imposed.

25 Let's go through the mitigating circumstances

1 that the defendant relies upon in this case. His
 2 Honor will instruct you that one of the mitigating
 3 circumstances or a circumstance that they think
 4 lessens the severity of this murder is the age or
 5 mentality of the defendant. Well the proof has been
 6 very clear. He is nineteen years of age. He has
 7 family that loves him. No evidence of any mental
 8 disease or defect. Knows what is going on. Able to
 9 go through school.

10 Now there has been some talk here of: This is
 11 a young man feeling his oats. Or boys, I think that
 12 was the term. Well you tell Richard Allen Haynes
 13 about these boys out there on that bike path. He
 14 knows what he is doing.

15 They also talk about the lack of the capacity
 16 of the defendant to conform his conduct to the
 17 requirements of law. He has full capacity to do
 18 that. He chooses not to. Look at his record.

19 They also say the defendant was under the
 20 influence of mental or emotional disturbance. The
 21 only disturbance that this defendant had on that
 22 night was that he was disturbed that he got blood on
 23 his shirt and he had to change that before he went
 24 to the nightclub.

25 And they talk about another mitigating or a

1 circumstance that lessens the severity of this
 2 murder is the fact that he doesn't have any prior
 3 convictions involving the significant use of
 4 violence against other people. Well you can look at
 5 his record. He has been through the system. Let's
 6 look at the totality of the circumstances in this
 7 case. You will have these exhibits. Look at them
 8 again.

9 Oh, and how not to decide this case. His Honor
 10 is going to charge you, and of course it only makes
 11 common sense, in terms of being comfortable with
 12 your verdict and proud of it, I would be the first
 13 to say that this is not an easy procedure
 14 whatsoever. No one takes any comfort or any
 15 pleasure whatsoever in sentencing anyone to die.

16 It's your responsibility in this case to make
 17 this decision. It's not a easy one. But you have
 18 all stated under oath in the pretrial part of this
 19 trial that if the facts and the circumstances
 20 warranted it and the law allowed it you could vote
 21 for and sign your name to a document calling for the
 22 death penalty. This is the case. It's not even
 23 close.

24 And look at the evidence. This defendant,
 25 Demetrius Gathers -- and if you were to decide this

1 case based on sympathy -- and, of course, that is
 2 not the way to do it -- but looking at Reverend
 3 Minister Haynes and his family and his situation,
 4 you would sentence this defendant to death in a
 5 minute. But you don't do it that way. You look at
 6 the mitigating and aggravating circumstances. You
 7 look at the individual characteristics of this
 8 defendant and the crime. Let's look at that.

9 First of all, this is State's Exhibit Number
 10 38, the home of Demetrius Gathers. Middle class
 11 home. He has got a roof over his head. Schooling
 12 provided to him. Teachers, very impressive teacher.
 13 Family members that care for him. No talk here of
 14 being forced into stealing for the sake of getting
 15 money for food.

16 Look at that night. This defendant had money.
 17 So looking to buy marijuana. They go and in fact
 18 buy alcohol. He has got a home. What does he
 19 choose to do? Goes to a nightclub. Has money for a
 20 nightclub. Those characteristics. It doesn't stop
 21 there, doesn't stop there by any means. You can
 22 talk in terms of his prior record. You are aware of
 23 those. Family Court. Court of General Sessions.
 24 And now he is before you for a most heinous act.

25 And look in terms of what happened out there on

1 that bike path. Reverend Minister Richard Allen
 2 Haynes was at his parents' home. Dorothy Haynes,
 3 Jesse Haynes. And he decides to go for a walk.
 4 This defendant, drinking his beer, comes upon him,
 5 with others. Reverend Minister Richard Allen Haynes
 6 has his Bible out, sitting on a park bench in our
 7 county, in our community, at a place where he had
 8 every right to be, and he chooses not to talk to
 9 this defendant.

10 What ensued is hard to believe and to describe,
 11 but you have heard the testimony. An attack begins
 12 that happens in this country, in this community, and
 13 while Reverend Minister Haynes begs for mercy --
 14 Lord no, Lord no -- the degradation continues. The
 15 circumstances of aggravation in this case are
 16 overwhelming.

17 Under your responsibility, under our law, and
 18 weighing the mitigating and aggravating
 19 circumstances, the verdict in this case, the
 20 decision, must be death.

21 And you will have this instrument of torture
 22 and pain. And when the defendant talks about him
 23 being a young man and feeling his oats, not knowing
 24 any better, you tell Ricky Allen Haynes, when this
 25 instrument was in his private body part, that this

1 defendant was a young man who didn't know what he
 2 was doing.

3 And as his life fluids seeped out onto our
 4 public park, and as he was losing consciousness and
 5 with the pain shooting throughout his body, you tell
 6 Reverend Minister Richard Allen Haynes that this
 7 defendant was feeling his oats, was acting wild and
 8 crazy, and this was a high school prank. And it
 9 doesn't stop there.

10 After using that instrument he goes and
 11 socializes and goes back. The depravity, the
 12 premeditation, the willfulness, the wantonness. An
 13 animal would have gotten more mercy. He goes back
 14 and with a knife stabs Reverend Minister Haynes in
 15 his abdomen. And with little thought, with no
 16 thought, as to Reverend Haynes' rights, as to
 17 Reverend Haynes' family, goes back and goes to the
 18 20th Century Fox nightclub. Goes to sleep that
 19 night. I am sure he slept very peacefully because
 20 there was no concern to him of this atrocity.

21 And you will have the exhibits to think about
 22 what happened out there. You will have some
 23 exhibits in there that will tell you, tell you what
 24 your decision must be in this case, although it's
 25 not pleasant. We know from the proof that Reverend

1 Minister Haynes was a religious person. He had his
2 religious items out there. This defendant strewn
3 them across the bike path, thinking nothing of that.

4 Among the many cards that Reverend Haynes had
5 among his belongings was this card. It's in
6 evidence. Think about it when you go back there.
7 He had his religious items, his beads. He had a
8 plastic angel. Of course, he is now with the angels
9 now, but this defendant Demetrius Gathers could care
10 little about the fact that he is a religious person.
11 Cared little of the pain and agony he inflicted upon
12 a person who is trying to enjoy one of our public
13 parks.

14 But look at Reverend Minister Haynes' prayer.
15 It's called the Game Guy's Prayer. "Dear God, help
16 me to be a sport in this little game of life. I
17 don't ask for any easy place in this lineup. Play
18 me anywhere you need me. I only ask for the stuff
19 to give you one hundred percent of what I have got.
20 If all the hard drives seem to come my way, I thank
21 you for the compliment. Help me to remember that
22 you won't ever let anything come my way that you and
23 I together can't handle. And help me to take the
24 bad break as part of the game. Help me to
25 understand that the game is full of knots and knocks

1 and trouble, and make me thankful for them. Help me
2 to be brave so that the harder they come the better
3 I like it. And, oh God, help me to always play on
4 the square. No matter what the other players do,
5 help me to come clean. Help me to study the book so
6 that I'll know the rules, to study and think a lot
7 about the greatest player that ever lived and other
8 players that are portrayed in the book. If they
9 ever found out the best part of the game was helping
10 other guys who are out of luck, help me to find it
11 out, too. Help me to be regular, and also an
12 inspiration with the other players. Finally, oh
13 God, if fate seems to uppercut me with both hands,
14 and I am laid on the shelf in sickness or old age or
15 something, help me to take that as part of the game,
16 too. Help me not to whimper or squeal that the game
17 was a frameup or that I had a raw deal. When in the
18 falling dusk I get the final bell, I ask for no
19 lying, complimentary tombstones. I'd only like to
20 know that you feel that I have been a good guy, a
21 good game guy, a saint in the game of life."

22 Reverend Minister Haynes, we know, was a very
23 small person. He had his mental problems. Unable
24 to keep a regular job. And he wasn't blessed with
25 fame or fortune. And he took things as they came

1 along. He was prepared to deal with tragedies that
2 he came across in his life.

3 And there has been some talk about this being a
4 tragedy. Well let's get one thing straight. This
5 isn't a tragedy. Tragedy is a birth defect,
6 something over which we have no control. This is an
7 atrocity. This was a willful, premeditated act of
8 this defendant, who in Charleston County, on our
9 shores, in this country, took with the most eager
10 pleasure the life of another in the most gruesome,
11 hard to describe and hard to believe circumstances.
12 The appropriate punishment in this case is death.

13 You will find some other exhibits in this case
14 that tell you more about a just verdict. Again this
15 is not easy. No one takes any pleasure from it, but
16 the proof cries out from the grave in this case.
17 Among the personal effects that this defendant could
18 care little about when he went through it is
19 something that we all treasure. Speaks a lot about
20 Reverend Minister Haynes. Very simple yet very
21 profound. Voting. A voter's registration card.

22 Reverend Haynes believed in this community. He
23 took part. And he believed that in Charleston
24 County, in the United States of America, that in
25 this country you could go to a public park and sit

1 on a public bench and not be attacked by the likes
2 of Demetrius Gathers. Weigh the aggravating
3 circumstances in this case. Look at it very
4 carefully. Calmly, rationally.

5 Reverend Haynes believed that he could come
6 onto our public parks and sit and be protected, that
7 the law protected him. That Demetrius Gathers would
8 not reign supreme on that public bench. And he
9 doesn't reign supreme. The law in this case
10 protects Reverend Minister Haynes. The proper
11 verdict, the only verdict in this case, is death.
12 Thank you.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

NO. 88-305

STATE OF SOUTH CAROLINA,

PETITIONER,

V.


DEMETRIUS GATHERS,

RESPONDENT.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 1988, one copy of the Brief in Opposition to Petition for Writ of Certiorari together with one copy of Motion for Leave to Proceed In Forma Pauperis were mailed, postage prepaid, to the below named counsel for the Petitioner. I further certify that all parties required to be served have been so served.


Donald J. Zelenka, Esquire
Assistant Attorney General
Office of Attorney General
State of South Carolina
P. O. Box 11549
Columbia, S. C. 29211


WILLIAM ISAAC DIGGS
Chief Attorney

South Carolina Office
of Appellate Defense
Suite 301, 1122 Lady Street
Columbia, SC 29201
(803) 734-1330

Counsel for Respondent.

SWORN to before me this
19th day of September, 1988.


Notary Public for South Carolina (L.S.)
My Commission Expires: 1-6-96